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SHALL JUDGES WEAR GOWNS?

Pennsylvania has raised the question as to whether our *nisi prius* judges should wear gowns and is endeavoring to create a sentiment in favor of such an innovation. The Dauphin County Bar Association of that state has passed favorably on a motion to request the judges of that jurisdiction to consider the advisability of wearing gowns during the sessions of the court.

While we have not been able to ascertain the sentiment of the profession throughout the country, we have observed that the lawyers of Pennsylvania seem to have indorsed the suggestion above referred to quite heartily. One lawyer from that state writes as follows: "In my opinion this is a movement which it would be well for our county courts throughout the state to imitate. Surely it lends dignity and solemnity to the proceedings. I have seen a judge in a New Jersey court sit in a murder trial dressed in a buff sack suit, with a carnation in his button-hole! And I have seen that same judge pronounce sentence of death upon a convicted murderer in very much the same clothes! I must say that in Pennsylvania it has generally been my experience that judges as a rule at least wear black suits, but surely gowns are still better." The Philadelphia Press, in referring to the action of the Dauphin County Bar Association, says: "The proposition is but another of the many evidences that legal minds are returning toward this ancient custom. To mention only a few other of the existing instances, the judges of the Philadelphia courts and of the supreme and superior courts of Pennsylvania have all adopted it and, as Dauphin county's courts are among the most important in point of business transacted throughout the state, it would be well if there, too, this old form were favorably looked upon. There is no question but that it lends dignity to the bench and that to the lay mind at least a judge in sober gown of black is far more impressive than one in the light gray business suit, which is, unfortunately, a not infrequent spectacle in certain courts."

There are two extremes to be avoided in the adoption of ceremonials, either of language or dress. The one extreme is the insincerity, sham and ridiculous delays which often attend and result from a too devoted attachment to matters of mere form. Indeed, it was the tendency to *ultra* formalism that led the colonists of this country to repudiate many of the ancient customs of the English courts and of English practice. Sincerity, frankness and whole-souled familiarity between man and man, without the least taint of caste or class prejudice or superiority, were the great ideals of the early colonists and of the pioneers of our early civilization in the states farther West. The other extreme, however, is in carrying out the idea of simplicity and familiarity to an extent that makes the serious transactions of life seem like mere mockery or ridiculous burlesque. Thus it has been charged that in some of the outlying districts in some of our far Western states it was not uncommon to see a judge on the bench in his shirt sleeves and with a cigar in his mouth while all of the proceedings were attended by the least possible formality. It did not seem particularly out of order in a court conducted in such fashion to see a judge jump down from the bench and engage in a fist fight with a lawyer who questioned his rulings.

Between these two extremes lies a happy mean, one, which, while it satisfies the sense of dignity on the one hand, does not convey the idea of ridiculous insincerity or out-of-placeness, if the expression may be pardoned for the sake of clearness, on the other. A gown on a notorious political ward worker, for instance, would not lend him any dignity as a justice of the peace or even as a circuit or county judge; on the contrary, the costume would seem to those who knew him, as absurd as fitting out the devil in the habiliments of an angel. The best way to dignify the bench and raise it higher in the esteem and confidence of the people is to put in as judges men of personal dignity and high intellectual, judicial and moral attainments. Without men of this character on the bench, all the silk in the world made up into gowns, or all the hair in the world made up into wigs would not serve to add a particle of dignity to the office which such men have been elected or appointed to fill.

Personally, we are opposed to all matters of mere formalism. We have no objections to

gowns, however, on federal or appellate judges, or wherever the personnel of the bench itself appropriately harmonizes with such attire. In such cases it is undoubtedly true that the assumption of the judicial gown would, at least, in the language of the Harrisburg *Patriot*, "give the appearance of greater dignity to a tribunal which, having the power to deprive men of their liberty and of their lives for offenses against society, should have the appearance as well as the substance of awe-inspiring authority and majesty."

NOTES OF IMPORTANT DECISIONS.

NEGLIGENCE—HOW FAR ACT OF GOD EXCUSES CARRIER FOR ITS OWN NEGLIGENCE.—The recent case of Jones v. Railroad, 97 N. W. Rep. 893, serves to call attention to the existing conflict of authority on the question of how far an act of God will excuse a carrier for the result of its own negligence, where the two concur. In the case referred to the Supreme Court of Minnesota held that while an act of God will excuse a common carrier for loss of goods in his possession, yet, where the negligence of the carrier concurs in or contributes to the loss, he is liable therefor.

In commenting on this decision, the *New York Law Journal* says: "The principal significance of the decision is in its recognition of the doctrine that a carrier may not be excused from liability for negligence if the loss or calamity was caused by an 'Act of God.' We discussed this question on November 2, 1903, taking as a text the then recent decision of the Supreme Court of Appeals of Virginia in Herring v. C. & W. R. R., IX Virginia Law Register, 534. In that case it was held that a common carrier, though guilty of negligent delay in transporting stock, was not liable for injury thereto inflicted by severe weather which overtook them in transit in consequence of the delay; that the severe weather and not the delay was the proximate cause of the injury, and to this cause only the law would look; that severe weather is an 'Act of God' for the consequence of which a carrier is not liable. The Virginia court cited decisions from many other forums in support of its ruling, and it may be that such ruling was countenanced by a numerical majority of American courts that have passed on the subject. Nevertheless, we believe that the position taken by the New York courts is much more just and expedient, and is supported by the sounder reasoning. As we remarked in our former editorial, 'there may be something approaching *reductio ad absurdum* in the view that, no matter how long a carrier's delay may be, or how gross its negligence, it is entirely exonerated and the owner of property has no redress if some extraordinary action of the elements intervene.'"

The New York decisions specially referred to by our learned contemporary, are those of Michaels v. Railroad, 30 N. Y. 564, and Reed v. Spaulding, 30 N. Y. 630. In the latter case, the court said: "Where a carrier is intrusted with goods for transportation, and they are injured or lost on the transit, the law holds him responsible for the injury. He is only exempted by showing that the injury was caused by an 'Act of God' or the public enemy. And to avail himself of such exemption he must show that he was himself free from fault at the time. His act of neglect must not concur and contribute to the injury. If he departs from the line of his duty and violates his contract, and while thus in fault, and in consequence of that fault, the goods are injured by the 'Act of God,' which would not otherwise have caused the injury, he is not protected."

CRIMINAL LAW—DEFENSE THAT WOMAN ACTED UNDER THE COERCION OF HER HUSBAND.—The principle that a woman who commits a larceny in concert with the husband is in certain cases presumed to have acted under coercion, and is therefore excused from punishment, has been well established in decisions dating back for centuries. There is still a good deal of vagueness as to the exact limits of the principle, but in a recent case the magistrate at the Marylebone police-court has carried it very far indeed. A woman and her husband were charged respectively with stealing and receiving certain property. It was proved that the woman was employed as housemaid in the prosecutor's house, while the husband lived elsewhere. The woman stole the goods in question in the house, and then took them out of the house and handed them to her husband, who disposed of them. The magistrate dismissed the charge as to the woman, and is reported to have said that, according to the old legal maxim, if a wife acts in concert with her husband, she is supposed to be under the husband's control, and, therefore, is not responsible.

The Solicitors' Journal in commenting on this case said: "If the facts were as stated, we do not hesitate to say that the magistrate made a serious mistake in his reading of the law. According to a long series of cases, it seems to be well established that the presumption in favor of a wife's having acted under the coercion of her husband is only raised when she commits a felony in his presence. It is no excuse in law that she acted under his strong persuasion, or even threats, if she did the criminal act in his absence."

Among the English cases which sustain the contention of our learned contemporary may be mentioned Rex v. Hughes (2 Lewin C. C. 229), which, as far as we know, has never been dissented from. There a woman, under the influence and directions of her husband, uttered certain counterfeit bank notes. When she negotiated the notes, her husband was not present. The court held that in order to raise the

presumption of coercion, "it is absolutely necessary that the husband should be actually present and taking a part in the transaction. Here it is entirely the act of the wife. The coercion must be at the time of the act done, and then the law, out of tenderness, refers it *prima facie* to his coercion; but when it is completed in his absence, no subsequent act of his (although it might possibly make him an accessory to the felony of his wife) can be referred to what was done in his absence." The rule is thus stated by Sir J. F. Stephen in his Digest of the Criminal Law: "If a married woman commits a theft, or receives stolen goods knowing them to be stolen, in the presence of her husband, she is presumed to have acted under his coercion and such coercion excuses her act." All authority, therefore, seems to be against the recent statement of law made by the magistrate. It is certainly open to doubt how far the rule, as established by authority, is beneficial to the community; but to extend the principle to the case of a woman systematically stealing her master's goods in his house and handing them over to her husband outside the house, would be dangerous in the extreme.

EXTRADITION—WHAT IS A POLITICAL OFFENSE WHICH WILL JUSTIFY A REFUSAL TO EXTRADITE A FUGITIVE FROM JUSTICE.—Nearly all treaties of extradition with foreign countries contain clauses making exception in the case of political offenses. But what is a political offense? The United States government has recently been much censured for the construction which its proper officer, Federal Commissioner Moore, has put upon our treaty with England in refusing to extradite a fugitive named Lynchehaun, who is wanted for murder. *The Solicitor's Journal* of London, England, states the grievance of that country in regard to this case in the following terms:

"The refusal of the United States of America to surrender the escaped convict Lynchehaun is an event of considerable importance, and a decision which has been received with much surprise in this country. We are not certain whether there is any appeal from the decision of Federal Commissioner Moore to the effect that the convict's offense was of a political nature, and that therefore extradition could not be granted; but if there is any appeal it ought certainly to be prosecuted without delay. Meanwhile, however, it appears that Lynchehaun has been set at liberty, so that it is quite likely that, even if he is wanted, he may not again be found. This person was convicted by a jury of his countrymen of a most brutal attempt to murder, and was sentenced to penal servitude for life. He had tried to kill a defenseless woman, had set fire to her house, and done all he possibly could to burn her with the house. It is true there was some question between him and his victim as to the payment of rent, and it is well known that there is considerable disinclination in Ireland to pay rent; but to call the crime a political offense show either that the person so describing it has most eccentric views as to the meaning of the expression, or else that he was grossly misled as to the state of things in Ireland. In the case of *Re* Meunier (1894, 2 Q. B. 415), a Divisional Court decided that in order to constitute a political offense there must be two parties in a country each trying by force to impose the form of government of its choice upon the other. The court, therefore, refused to grant a *habeas corpus* for the release of an anarchist who had exploded a bomb in a Paris cafe and killed two persons. Here the persons killed were apparently strangers to the murderer, and the criminal act was committed in furtherance of the general object of anarchists to overthrow all governments. In the Irish case, however, the unfortunate woman who so nearly lost her life was a person well known to the convict, and towards whom he undoubtedly bore malice. That alone ought to remove the case from the political list. But who can say that at the present time there is in Ireland any party attempting to overthrow by force the government of the country? And yet this American official, in a considered judgment, is reported to have said that the offense was an act incidental to a political movement, and that the people in Ireland would be in open insurrection, only that the right to carry arms was denied them. He is also said to have spoken of the 'odious' laws affecting landlord and tenant in Ireland, and to have said that an act aimed at changing laws was a political act.

The criticism thus made against this country for the action of its officer having in charge matters of extradition is a very serious one and is apparently well founded. It would surely be extremely dangerous to the interests of society to accept such a doctrine as that alleged to have been laid down by our federal commissioner, and it is worthy of note that some of the extreme Nationalist newspapers of Ireland are loudest in expressing their indignation that this foul crime should be called political. The law as to what constitutes a political offense was carefully considered by the High Court in *Re* Castioni (1891, 1 Q. B. 149), and the court approved of the definition by Sir James Stephen in his History of the Criminal Law, that it includes only 'crimes incidental to, and which formed part of, political disturbances.' There must, in fact, according to the decision, be something going on in a state which amounts almost to a state of war, and the offense must have been incidental to that condition of things. Lynchehaun's crime does not seem to approach this definition, and it is to be hoped that the decision of Commissioner Moore will be contested on appeal and promptly reversed if the facts are found to be as our English contemporary states them."

WHETHER A CONSIDERATION IS NECESSARY TO A WAIVER.

Introduction.—One of the most difficult of all the doctrines of our jurisprudence to ascribe a foundation for, or to gain any knowledge concerning, is the doctrine of waiver. Its application in antiquity is almost equal to the common law itself, and yet of the reason of that application very little is known. For example, Is a waiver contractual in its nature? Is it a branch of the law of estoppel? Or, is it founded upon a maxim of logic *allengas contrari non est audicendus?*

A waiver will at once be seen to bear many similarities to a contract; that is, every waiver embodies an agreement not to insist upon a certain right. For example, we have a pure contract in the case where an indorser waives the protest of a note, and it is also an express contract. But where an insurance company waives the forfeiture of a policy of insurance by conduct which would make it inconsistent or inequitable for them to insist upon the forfeiture, what have we more than an implied contract? And is it different in any particular from the case in which the implied contract is raised where one man performs services for another without an express arrangement for compensation?

We have also suggested that waiver might be considered as an application of the doctrine of estoppel, and as an outgrowth from the maxim that a man may not blow both hot and cold.

We will consider first a waiver considered as a contract. One of the primary essentials to a contract, either express or implied, is a consideration. Now this consideration need not consist in some compensation or benefit moving to the promisor, but it may also consist in some disadvantage to the promisee. In either case it is now firmly established that the contract founded either upon the benefit moving to the promisor or upon the disadvantage moving to the promisee will be binding.[1] It has been declared that a waiver to be operative must be an agreement founded on a considera ion, or that the acts relied upon as a waiver must be such as to estop the party from insisting upon the contract or performance of the condition.[2] It has also been said that a mere waiver signifies nothing more than an intention not to insist upon a right which in equity will not, without consideration, bar the right any more than at law accord without a satisfaction would be a plea. Other cases, however, have held to the contrary, and the first case which we cited above has been distinctly departed from in its own state. In a subsequent case where it was held that if, in any negotiations or transactions with the insured after knowledge of a forfeiture, the insurance company recognizes the continued validity of the policy, or contract based thereon, or required the insured by virtue thereof to do some act or incur some trouble or expense, the forfeiture is, as a matter of law, waived, and it is now settled in this court that such a waiver need not be based on a new agreement or on an estoppel.[3] Other cases, however, have held in harmony with the first case we cited, and have declared that a man is not to be deprived of his legal right unless he has acted in such a way as would make it fraudulent for him to insist upon it.[4] This, however, is not the rule in other well-considered cases. For example, it is said that a party cannot occupy inconsistent positions, and where one has an election between inconsistent courses, he will be confined to that which he first adopts.[5] It has also been held that a waiver or dispensation is not in the nature of a contract which requires the support of a consideration, but rather an estoppel whereby an act or omission, recognizing a contract, as an insurance policy, as of binding force after a forfeiture; precludes one from insisting that the condition is not dispensed with, and all conditions of such a contract may be waived or dispensed with even by an agreement without consideration.[6] The authorities then we see are at first blush about evenly divided upon the proposition of the necessity for a consideration to raise a waiver, and it may be seen that those w o insist that there is no necessity for a consideration are inclined to place the doctrine either upon the maxim of logic or within the rule of an estoppel.

[1] Parsons on Contracts, 358.

[2] Rippey v. Ætna Ins. Co., 30 N. Y. 136; Mutual Life Ins. Co. v. La Croix, 45 Tex. 158.

[3] Titus v. Glenn Falls Ins. Co., 85 N. Y. 419.

[4] Willmott v. Barber, 15 L. R. Ch. D. 105, 49 L. J. Ch. 792; Shaw v. Spencer, 100 Mass. 382-395; Wheaton v. North British Ins. Co., 76 Cal. 415.

[5] Webster v. Phœnix Insurance Co., 36 Wis. 67.

[6] Viele v. German Ins. Co., 26 Iowa, 9; Georgia

Waiver as an Estoppel.—Waiver has been spoken of as another term for estoppel.[7] It has also been said that ordinarily a party should not be considered to have waived a forfeiture in the absence of facts constituting an estoppel. It has further been said that the acquiescence which will deprive a man of his legal rights must amount to a fraud, and in the view of the English courts[8] this is an abbreviated statement of a very true rule, for they say that a man is not to be deprived of his legal rights unless he has acted in such a way as would make it fraudulent for him to set up that right. Among the elements which are essential the parties setting up the waiver must have expended some money or done some act in the faith of his belief that the other party has waived his right. It has also been declared that in order to make out a case of waiver against a legal right there must be a clear unequivocal and decisive act showing such a purpose or act, amounting to an estoppel to set up the right.

Waiver Considered as an Application of a Rule of Logic.—With perhaps a certain amount of truth it may be insisted that there is a distinction between the substantive law and waiver in the adjective law, and it may perhaps be said that waiver in the substantive law must rest upon some consideration, but that waiver in the adjective law need not be supported by a consideration, but that it need merely depend upon what is one of the most prominent features of the law of our procedure, viz., that which insists that from beginning to end whatever is done by any party to a suit shall be consistent with his previous acts in that cause. A slight investigation, however, reveals the fact that in many instances it is just as easy to claim a consideration, when a man failes to except to the erroneous rulings of the trial court and is held to have waived the right to assign them as error, or to claim that those rulings were erroneous upon grounds which he did not set up in the trial as it is to show a consideration for many implied contracts. But, be that as it may, there are many implied waivers which arise from the maxim, that he is not heard who alleges things which are contrary to each other.[9] For instance, when the accused has pursued a particular mode of impeaching a witness he may not object to the state pursuing the same method.[10] So, also, is it a rule of pleading, that pleadings may not be double.[11] Likewise to this branch of the doctrine the so-called waiver of jurisdiction may be assigned, if it is in truth an application of the doctrine of waiver at all. That it is such an application, we doubt.

It is declared to be the rule that if one appears generally, or for any other purpose than the special and particular one, in objecting to the issue or the defective execution of the process by which he should have been brought in, then he waives that error and the court has jurisdiction.[12]

We believe, however, that these cases are improperly founded upon the doctrine of waiver, for, as is said in the first case cited, appearance of the defendant is, in and of itself a formal act of great importance, for it is the process or act by which a person against whom a suit has been commenced, submits himself to the jurisdiction of the court, and we believe, as is declared in that case, that it is the voluntary submission to the jurisdiction of the court that gives the court jurisdiction. That the court has jurisdiction by that act and not by any implied waiver of the defect or error in the execution of the process.

It may in truth be said that by occupying a position inconsistent with an objection to the jurisdiction of the court the parties waive the error or defect in the process, but it is not that waiver but rather the voluntary submission by the appearance that gives the court jurisdiction. It would then be idle to object to the jurisdiction.

Of more force, under this branch of our discussion is the rule upon which the doctrine of election is founded. For example, a widow who is put to her election between dower and the provisions of her husband's will, by choosing one or the other, is precluded there-

Home Ins. Co. v. Kinniers' Adm., 88 Grat. (Va.) 109, 5 Cent. L. J. 127.

[7] Wheaton v. North British Ins. Co., 76 Cal. 429.

[8] Willmott v. Barber, 49 L. J. Ch. 792, 15 L. R. Ch. D. 105.

[9] Broome's Legal Maxims, 160.

[10] State v. Slack, 69 Vt. 486, 38 Atl. Rep. 311, 45 Cent. L. J. 363.

[11] Stephen on Pleading, sec. 142.

[12] Groves v. Grant Co. Bd., 42 W. Va. 587, 26 S. E. Rep. 460; Omaha Loan Co. v. Knight, 50 Neb. 342, 69 N. W. Rep. 933.

after from altering her choice. Of like import are the cases called election of remedies, where if one has elected to proceed upon an implied assumpsit in the case of tort, or *vice versa*, he may not rescind his action and pursue the opposite course.

The Anglo Saxon idea insisting that our laws shall be systematic, orderly and logical may be seen in many of our maxims and rules. For example, we have the rule that the reason of the law ceasing, the law itself ceases, and many others of similar import might be given. It may, however, on the other hand, be said, perhaps, with a great deal of force, that one ought not to be deprived of a right without a consideration for that deprivation. Particularly is this exemplified in American jurisprudence where every constitution makes provision for payment in case where property is taken by the state or by private individuals exercising the state power for public purposes. The theory being that until a consideration has passed, the right should not be considered to have been forfeited. There is no means known to the law unless the doctrine of waiver is that means, whereby one may be compelled to give up a right, or be precluded from insisting upon it without he shall have first been paid for it, or unless the party claiming that he should not insist upon it would be prejudiced because of previous acts of the claimant, if the claim is permitted. This idea of compensation is exactly as fundamental in our jurisprudence as is the idea of consistency.

Again, why should one be precluded from insisting upon a right which is his by law unless there is some consideration for his relinquishment of the right any more than that he should be compelled to turn goods over to another without compensation? It may, perhaps, seem a little remote to some to speak of the disadvantage which would arise to the party setting up the waiver if he were not allowed to set it up as a consideration, but it is certainly nothing else. It is simply a case of an implied contract, nothing more.

But what of the waivers which arise from an application of the maxim that he is not heard who alleges inconsistent positions. Are these dependent upon a consideration? I believe they are so dependent if they are true applications of the doctrine of waiver. Let us again get at what we mean by a consideration. I will not stop to sift out all the relations between an implied contract and estoppel, but will say that when I say consideration I mean also to cover the prejudice which is necessary to the person who sets up an estoppel in order that he may maintain it, and intend to fulfill that principle whereby one is deprived of a right only because he has agreed not to insist upon it for a consideration or because it would be inequitable for him to claim it. I have already shown that the so-called waiver of jurisdiction is not a true waiver. The waiver of an inconsistent right which arises from the acceptance of the opposing right is a true case of waiver, and the operation of the doctrine of implied election is solely dependent upon the consistency of two rights[13] as a dower and a devise or legacy under the husband's will.

Here we have one of the clearest cases of the necessity of a consideration, or something akin to it before the waiver shall be binding. Thus the enjoyment of a provision, in lieu of dower for nine years[14] or the assumption of ownership over one of the properties[15] or the acquiescence in the provisions of the will for twelve years[16] makes an election. The election may, however, be revoked by the restoration of what has been received in pursuance of it[17] as when it is made under a will before distribution.[18]

This illustration of the application of the doctrine, under consideration, has been selected because it appears typical of those which have not been presented. I believe it also apparent from this that the principle of recompense is plainly evident in them all, and that they make more pointed the hypothesis that there is no true waiver without a consideration. Notwithstanding the fact then, of the great regard of our law for consistency, the doctrine of consideration is yet more powerful. It may be that in many cases the advantage to waivant, or the prejudice to the waivee will be difficult of ascertainment, yet if there be any such, the court ought not to consider

[13] Apperson v. Bolton, 29 Ark. 418; Alling v. Chatfield, 42 Conn. 276; Colgate's Exr. v. Colgate, 23 N. J. Eq. 372.
[14] Hovey v. Hovey, 61 N. H. 599.
[15] Burroughs v. De Couts, 70 Cal. 361.
[16] Carmon v. Apperson, 14 Tex. 553.
[17] Steele v. Steele, Admr. 64 Ala. 438.
[18] Yorkly v. Stinson, 97 N. Car. 236

their amount but should enforce the waiver. On the other hand, notwithstanding the decisions to the contrary, I believe the weight of authority to be consistent with the other doctrines of our law that in the absence of benefit to the one party or prejudice to the other, the former will not be held to have waived his rights, and that a truism was voiced in the holding, "that a waiver is nothing unless it amount to a release." It is by a release or something equivalent only that an equitable demand can be given away. A mere waiver signifies nothing more than an expression of intention not to insist upon a right, which in equity will not, without consideration, bar the right any more than at law."[19]

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[19] Stockhouse v. Barnston, 10 Ves. Jr. 466.

BENEFIT SOCIETIES—AUTHORITY OF LOCAL LODGE TO WAIVE FORFEITURE.

UNITED MODERNS v. PIKE.

Court of Civil Appeals of Texas, November 4, 1903.

Where members of a benevolent insurance association make their contract with the supreme lodge, the custom of the local lodge in accepting dues four to five days overdue, unknown to the supreme lodge, does not estop the supreme lodge from claiming a forfeiture when dues are paid in that way, the supreme lodge not being charged with knowledge possessed by the officers of the local lodge, and they not having authority as agents to waive forfeitures.

The custom of the financier of a local lodge of a benevolent insurance association of sending reports to the supreme lodge, and their acceptance, without protest, later than directed by the by-laws, does not estop the supreme lodge from claiming a forfeiture for delay in payment of dues, since the promptness of these reports in no way affects the rights of members.

Where, under a life insurance contract, the assured directed his mother to pay his premium, and she did so, but after it became due, forfeiture cannot be prevented by asserting that he did not know the facts concerning the payment, though he continued his payments thereafter, she being his agent in the transaction.

JAMES, C. J.: Appellant is a benevolent association incorporated for the purpose of insurance to members under the laws of Colorado, having a supreme lodge at Denver and subordinate lodges in different parts of the United States, one of which is located at San Antonio, Texas, known as "Crockett Lodge No. 121." Of this subordinate lodge the deceased, J. L. Bowen, was a member, and held a certificate for $1,000, that had been issued to him by the supreme lodge on May 28, 1900. It provided that it was issued on the express condition (among others) that said member shall in every particular, while a member of the order, comply with all and singular the constitution, laws and regulations of the order, and a failure to pay dues or assessments shall forfeit all rights to benefits as provided in the constitution and laws. The record discloses the following provisions of the constitution and laws:

Section 2, art. 11, provides as follows: "Upon the death of a beneficiary member in good standing the recorder and financier of the local lodge may at once advise the supreme lodge, and the sum of one hundred dollars may be forthwith forwarded to the beneficiary through the local lodge to be disbursed for expenses of last illness or otherwise as the beneficiary may elect, and the payment of said sum being in advance of the receipt of full proofs, shall not bind or estop the order to make or claim any defense that might exist against the payment of the beneficiary certificate, should there be such defense."

Section 1, art. 13, provides as follows: "The first monthly payment falls due on the first day of each succeeding calendar month and must be paid on or before the last day of the month in which it falls due and no notice shall be required from the order for such payments. Members failing to make payments within the time stated shall be in default and can only be reinstated as provided in the next succeeding sections."

Section 2, art. 13, provides as follows: "Members failing to make all payments as they become due, do elect by reason of such failure, to terminate their membership in the order and shall thereby stand suspended by non-payment of the call, and under the laws do elect and agree by reason of such failure, not to hold the order for any liability whatever, and do thereby surrender all rights as a beneficiary member; provided that if the member is in good health and shall pay any past due payments within ninety days from the time it became due, together with all other payments that have come due in the meantime, and shall also accompany his payment with his certificate that he is in good health, and the local financier shall remit such payment to the supreme recorder within fifteen days after receipt of same, his beneficiary certificate shall become reinstated from the date of the payment, provided that the member is in fact in good health at the time, but the fact of payment and furnishing certificates shall not bind the order, unless the member was in fact in good health; and provided further, that after any payment is past due for more than ninety days then the beneficiary certificate can only be reinstated upon the approval of the supreme chancellor and upon payment of all past due payments within six months from the date of first delinquent payment, accompanied with a certificate from the local medical examiner that the member is in good health at the time of payment, and such certificate shall not become reinstated unless the supreme chan-

cellor shall approve the reinstatement within the six months."

Section 4 thereof provides: "Any member who fails to pay lodge dues or benefit premiums during the month in which the same severally became due and payable, shall stand suspended, and unless reinstated, neither he nor his beneficiaries shall be entitled to any of the rights, privileges or benefits of the order. Except that neither this nor any clause in these by-laws shall modify benefits in so far as the benefit certificate may provide for extended or paid up values, based upon reserve assumptions."

Section 5 thereof provides: "The payments shall be made to the financier of the local lodge to which the member belongs. The financier shall make report on blanks furnished by the order, accompanied by remittance on the first business day of each calendar month by bank exchange, post office or express money order, payable to the United Moderns or order."

Bowen's application recited: "I agree to be bound by the constitution, laws, rules and regulations of the order enacted from time to time by he supreme lodge, or other authorized authority, and that the order shall be under no liability to me or my beneficiaries during any period of time when I shall be in default on payments due me from the order, or otherwise not in 'good standing' with the order."

The monthly payment for October, which was due on or before October 31, 1901, was not paid to the financier of the local lodge until after the latter date. The circumstances of this payment, as detailed by appellee, and presumably as strong as they can be stated in favor of the judgment, were substantially as follows: Bowen left San Antonio in October for a trip to Galveston, and told his mother, Mrs. Pike, to see that his dues were paid; that a collector would call, as they always did. On October 30th her son wrote her to pay the dues. No collector called on October 31st, and Mrs. Pike went next day to the office of the financial secretary of the lodge, Mrs. Spruce, and paid the dues, which were receipted for in Bowen's regular receipt book in the name of Mrs. Spruce, by a young man employed in Mrs. Spruce's office, who was authorized by her to receive such payments in her absence, and who dated the receipt October 31st. There is some doubt on the testimony whether she paid on November 1st or November 2d, and the young man told her it was due on October 31st, but that it would be all right. He also had Mrs. Pike sign a health certificate upon a form used for such purpose and furnished by the order, which read: "Date 11-6-01. I hereby certify that I am in good health, and do not know any reason why I am not in as good physical condition as when I passed medical examination. James L. Bowen, Member." There was evidence that this health certificate was postdated by the young man, it having been given prior to the 5th of November, at the time Mrs. Pike made the payment. He probably did not turn the money over to Mrs. Spruce until the 6th, and so dated the certificate when he turned both over to her. When her son returned from Galveston, she gave him the book, but told him nothing, and he went on paying his dues until he died several months later. There was evidence of it having been a custom with the members of the lodge ever since it was chartered (several years) for the financier to accept dues up to the 6th of the succeeding month as if they had been paid on the last day of the preceding month, without any health declaration, but after that date she would take the declaration. There was not a particle of evidence, however, to show that the supreme lodge had knowledge of the existence of this custom. The financier, Mrs. Spruce (as appellee puts it), "who reported direct to the supreme lodge, and was its direct agent, knew of this custom, and herself invariably conformed to it until the present suit was brought." The only method, under the facts before us, that can be relied on for charging the supreme lodge with knowledge of the custom, was through the fact of her knowledge and the knowledge of the members of this subordinate lodge.

There is another fact referred to in appellant's brief which we shall mention here, because counsel seem to rely on it as tending to establish estoppel, which is that this financier in several instances had made her reports and remittances to the supreme lodge after the time prescribed by the constitution and by-laws, and such conduct appears to have been passed over without objection by the supreme lodge; consequently appellant contends that this would indicate and be some evidence of a waiver as to the provisions of the constitution and by-laws generally, including the provision that payment must be made to the financier on or before the last day of the month.

Bowen, at the time his mother signed his name to the certificate of health, was not in good health. From the proofs of death given by Mrs. Pike and Dr. Bleim and from the former's testimony it appears that Bowen had a blow from a plow falling on his breast in October, 1901, from which he had a hemorrhage, from which time he had a cough, which developed into rapid consumption. The mother states in her testimony that she knew he had that hemorrhage when she signed the health certificate, but did not know it was so severe.

With the facts substantially as given, the court submitted the case to the jury upon the following charge: "You are instructed that the constitution and by-laws of defendant entered into and formed a part of the certificate of membership, which constitutes the contract herein sued upon by plaintiffs, and that by reason of the failure to pay the monthly dues of October, 1901, on or before the last day of said month, the said Bowen ceased to be a member of Crockett Lodge of said defendant corporation, and had forfeited all benefits under his certificate, and you will therefore find for the defendant, unless you believe from the

evidence that the conduct and course of dealing, if any, of defendant prior to any default on the part of said Bowen, was such as to lead a reasonably prudent man under like circumstances to believe that defendant would not insist upon a strict compliance with the terms of its contract, requiring payments of dues to be made within the time required by its constitution and by-laws, but would receive the same within a reasonable time thereafter; and unless you further believe from the evidence that said Bowen was led by such conduct and course of dealing of defendant, if any, to believe that defendant would not insist on a strict compliance with its contract requiring payment during the time the dues were payable, and thereupon relying, made payment of the dues for October, 1901, within a reasonable time after the end of said month, then in such case you will find for the plaintiffs." Upon Bowen's death the supreme lodge caused the sum of $100 to be paid to plaintiffs in pursuance of section 2, art. 10, above quoted, and defendant, by a cross-pleading, asked for judgment against plaintiffs for said sum, less all payments made for dues to defendant for the month of October and thereafter.

According to the tesimony the following facts clearly appear: that Bowen failed to make his October payment on or before October 31, 1901; that he never gave any certificate of health, the same being given by his mother for him, without his knowledge; that he was not in fact in good health at the time it was given, nor was he in as good health as when he was examined; and that the supreme council had no actual knowledge until some time after his death of the custom which prevailed between the members of this subordinate lodge and its financier. It being well settled that the constitution and by-laws of the order entered into this contract of insurance, and that the member is presumed to know all its terms, he ceased to be insured by reason of the default in the monthly payment, and his failure to give a certificate of health, and if his mother's act under the circumstances could be deemed his own, then by its falsity. The only means of escape from this result is upon the theory adopted by the trial court, viz., that the order had waived the requirement of prompt payment, or was estopped by reason of a custom adopted by the financial secretary of the lodge. Forfeitures, of this character particularly, are not favored in law, and the courts seize upon slight circumstances in the interest of justice to deny them effect. But circumstances of a substantial nature that can reasonably support a waiver or an estoppel must exist, as in any other case. It being contended that the financier or financial secretary of this lodge was the agent of the governing body (the supreme lodge), and her knowledge was its knowledge, we shall consider the relations of herself and of the local lodge to the supreme lodge. We have no fault to find with the following Texas cases in so far us the matters presented in them for decision were concerned: Knights of Pythias v. Bridges (Tex. Civ. App.), 39 S. W. Rep. 333; Brown v. Sovereign Camp (Tex. Civ. App.), 49 S. W. Rep. 893; Order of Columbus v. Fuqua (Tex. Civ. App.), 60 S. W. Rep. 1020. The admission of members to the order is committed to the subordinate lodges. They are the agencies by which members are made, and, when acting within their jurisdiction, the supreme or governing body is bound. But it appears to us that if, after the member is admitted to the order, he enters into a contract with the supreme lodge, the subordinate lodge has nothing to do with that contract, and any act on its part tending to waive the stipulations in favor of the member can have no effect unless in some manner authorized or assented to by the supreme lodge. This applies as well to the acts of any officer of the subordinate lodge. To quote the language of Boyce v. Royal Circle (Mo. App.), 73 S. W. Rep. 300: "The spontaneous action of local secretaries of this and kindred societies in accepting dues from suspended members contrary to the constitution and by-laws, whether the acceptance be due to ignorance or complaisance, does not *ipso facto* reinstate the insurance, and cannot have that result unless the settled rules of law governing contractual obligations are set aside as to contracts of fraternal insurance. It is true a course of business may be tolerated by the chief officers of an order by which a local officer may become vested with authority to waive prompt payment of dues or other regulations. If a local secretary goes on for a considerable peroid accepting dues after default, and remitting them to the supreme officers, who accept them with knowledge that they were paid out of time, these would be facts from which a waiver might be inferred, the waiver being founded on the notion that the member was led into believing that it was alright to pay his dues after the regular date." The Supreme Court of the same state (Missouri) has expressed itself on the same subject in language which fully accords with our views: "A member dealing with a subordinate officer of a society, knowing his duties to be prescribed, has no right to rely upon the act of that officer, if he should attempt to waive a requirement which under the law, he has no right to waive. But when he has dealings of that kind with such officer, and those dealings are of such a nature as that they must pass under the observation of those who have in charge the ultimate management of the company's affairs to such an extent as to justify the member to believe that the practice is approved by the company itself, the company is estopped to take advantage of the situation. It is essential to the life of these societies that the members pay the assessments promptly, as their laws require. As a general rule, it is cheap insurance; its cost is calculated at the lowest rate at which it can be carried: and if the society is lax, and the officers carry the sentimental feature of its organization too far into its business management, it is liable to fail of its beneficent purpose. But the duty of guarding

against such misfortune is primarily on the officers who are intrusted with its management, at the head, and, if they permit lax dealing of their subordinate officers to the degree of misleading a member, the responsibility must rest upon the society." McMahon v. Supreme Tent (Mo.), 52 S. W. Rep. 388. See, also, Elder v. Grand Lodge (Minn.), 82 N. W. Rep. 987; Supreme Lodge v. Keener (Tex. Civ. App.), 25 S. W. Rep. 1084; 2 Bac. Ben. Societies & Life Ins. § 434a; Lyon v. Supreme Assembly (Mass.), 26 N. E. Rep. 236; Modern Woodmen v. Tevis, 117 Fed. 369, 54 C. C. A. 293.

Cases to the contrary are found. In Illinois the rule seems to be settled that the subordinate lodge is agent for the order for all purposes connected with the insurance contract. Grand Lodge v. Lachmann, 64 N. E. Rep. 1022. But the decision does not distinguish between acts done within the jurisdiction of the local lodge and acts not within its jurisdiction. The case refers for authority to two cases which related to the eligibility of members that the local lodge had admitted. In New York the supreme court recently made a similar ruling (Bell v. Supreme Lodge, 80 N. Y. Supp. 753), but we observe that the decisions of the court of appeals which that opinion cities for support are not authority for the particular proposition.

While there is some conflict in the cases on the subject, the better reason seems to us to be with the proposition as we have stated it. The contract is between the order and the member of a subordinate lodge. Why, then, should the subordinate lodge as such, or its members and officers, have power to amend or waive its stipulations? If they inherently have such power, how could the managing body safely carry on its system of insurance? The record discloses that the supreme lodge or managing body is located in Colorado, with branches throughout the Union, and its governing officers are naturally in no position to be conversant with the doings in each subordinate lodge. It did not send examiners to visit the different lodges to inquire into their proceedings. Of course, if they practiced a system of inspection, it might well be presumed that they became acquainted with the usage that seems to have prevailed in this particular lodge; but the system would doubtless entail such expense as would exhaust the revenues and defeat the beneficent purposes of the order. It may be also that a custom contrary to the laws might be so general among the different local lodges, and continued for so long a time, as would warrant the inference that it had come under the observation of the managing officers. No public policy requires the courts to declare the subordinate lodges or their officers agents for all purposes of the supreme council. Public policy, it seems to us, is more concerned in the enforcement of contracts as the parties have made them; and the contract in question was strictly one between the supreme council and the deceased, with which the subordinate lodge had nothing whatever to do, so far, at least, as waiving its terms and conditions were concerned. As the eligibility of the members was a matter committed to the subordinate lodge, they might, by terminating his membership by suspension or expulsion, have in this way affected the insurance; but while he remained a recognized member of the lodge neither the latter nor any of its officers had any power to make waivers that would affect the contract. The financier was by the contract the one authorized to receive the dues, as the contract stipulated, and to forward same to the supreme lodge. She was not the latter's agency outside of this. When she undertook to receive dues otherwise than in accordance with the contract, she was not acting within her agency. It has been held in this state, where the agent makes the contract and transacts all the business appertaining to the policy, as in fire insurance, the agent is in fact the company for all purposes, and the latter is bound by his knowledge and waivers. Wagner v. Ins. Co., 92 Tex. 549, 50 S. W. Rep. 569. This rule has not been extended to insurance contracts of the nature of the one before us, and the reasons for it do not exist here.

It is contended further that, as there was evidence that the financier habitually departed from the laws in respect to reports and remittances, by sending them to the supreme lodge later than the laws directed her to, and this practice was never complained of, but indulged by the superior officers, this would have warranted the jury in finding that they led members to believe that payments need not be promptly made, and that strict compliance with the laws was not necessary. We can see no force in this reasoning. If the rights of the members were conditioned on prompt reports and remittances being made by the financier, the above would doubtless amount to a waiver of that particular requirement, and that is all that could be made out of the evidence mentioned. The act would have no bearing on other conditions, and no person would be justified thereby in acting upon the supposition that the regulations were waived in other respects. There was nothing in these reports and remittances calculated to notify the superior officers of the fact that payments were made and received out of time, or that any usage prevailed among the members of the lodge as to payments in contravention of the laws.

There is no force in the contention that this man continued to pay his dues and died without knowing that the payment was not properly made, nor the facts attending the payment. His mother, who was fully informed, was his agent, and the order was in no way responsible for his being kept in ignorance of them. It was incumbent on him to make the payment in time, or reinstate himself as provided.

The fact that the contract or the laws did not expressly state that the financier could grant no indulgence, or that she was the agent of the

member, and not of the order, does not, we think, make any difference. This fact is about all that differentiates this case from that of Soverign Camp v. Rothschild, 15 Tex. Civ. App. 463, 40 S. W. Rep. 553. In our opinion, the consequences of the default are fixed by the contract, and could not be removed by the acts of the subordinate officer or of the subordinate lodge not in some manner permitted or countenanced by the supreme lodge.

These views necessarily lead to the conclusion that there was no evidence which would have authorized the jury to find that the condition as to the November payment was waived, or that defendant was estopped to defend the action by reason of the default. Therefore the judgment is reversed, and the cause remanded.

NOTE.—*Estoppel or Waiver Affecting Right of Forfeiture in Mutual Benefit Certificates.*—No one can read the opinion of the court in the principal case and not have the conviction forced upon him that a great injustice was done. The facts simply stated were these: Mr. A. held a beneficiary certificate in a certain order. One of the monthly payments fell due on October 31, 1901. He was out of the city at the time, but on October 30, he wrote his mother to pay his dues, the following day. The mother relying on a custom to send a collector for them, deferred action on the 31st but on the next day, no collector having called, she went to the financial officer, paid the dues and got a receipt therefor. A. returns and for several months continued to pay his stated premiums regularly until he did. To say in a case of this kind that the order has not waived any technical right of forfeiture which it may have had by the non-payment of dues on the exact day required, is a travesty on justice.

In the first place as the court in the principal case properly says, but in our humble opinion, very improperly heeds, the by-laws of a benefit association working a forfeiture of membership will be construed so as to avoid the forfeiture, if any just pretext exists for doing so. Connelly v. Shamrock Benevolent Association, 43 Mo. App. 283.

The rule that conditions of forfeitures in an insurance policy may be waived by the insurer applies as well to mutual benefit societies as to incorporated companies. Railway etc. Benefit Assn. v. Tucker, 157 Ill. 194, 42 N. E. Rep. 398.

The continued receipt of assessments upon an endowment certificate up to the day of the holder's death constitutes a waiver of any technical forfeiture by reason of non-payment of lodge dues. Knights of Pythias v. Kalinski, 163 U. S. 289; Millard v. Supreme Council, 81 Cal. 340; Menard v. Society, 63 Conn. 172, 27 Atl. Rep. 1115; Metropolitan, etc., Ass'n v. Windover, 137 Ill. 417; Elmer v. Life Ass'n, 138 N. Y. 642; McDonald v. Supreme Council, 78 Cal. 49; Murray v. Ass'n, 90 Cal. 402, 25 Am. St. Rep. 133; Great Western, etc., Ass'n v. Colmar, 7 Colo. App. 275; Warnebold v. A. O. U. W., 83 Iowa, 23, 48 N. W. Rep. 1069; Modern Woodmen v. Jameson, 48 Kan. 718, 30 Pac. Rep. 460; Bull v. Aid Ass'n, 64 N. H. 291; Shay v. Benefit Society, 54 Hun, 109; Griesa v. Benefit Ass'n, 60 Hun, 581; Damher v. Grand Lodge, 10 Utah, 110; Stylon v. Insurance Co., 69 Wis. 224, 2 Am. St. Rep. 738. This rule is denied in Texas. Supreme Lodge v. Keener, 6 Tex. Civ. App. 267, 25 S. W. Rep. 1084. A waiver does not result, however, from merely demanding another assessment at the same time if notice is called to the prior delinquen Schmidt v. Modern Woodmen, 84 Wis. 101; Scheele v. Home Lodge, 63 Mo. App. 277. See, also, Lyon v. Royal Society, 153 Mass. 83. It has been held, however, that a forfeiture for non-payment of an assessment, within thirty days after notice, is waived by sending the member a notice of an assessment made more than thirty days after the prior default. American, etc., Aid Society v. Quire (Ky. 1886), 7 Ky. Law Rep. 671. Whether in this class of cases the knowledge of the chief officer of the society is necessary, and, if so, how far, is clearly stated by the United States Supreme Court in Knights of Pythias v. Kalinski, *supra:* "Granting that the continued receipt of premiums or assessments after a forfeiture are known to the company, this is true only of such facts as are peculiarly within the knowledge of the assured. If the company ought to have known the facts, or with proper attention to it own business would have been apprised of them, it has no right to set up its ignorance as an excuse." In this case it was held that the failure of the keeper of the local records to notify the chief secretary of the fact that a member was in arrears is imputed to the order or society rather than the delinquent member.

It has been held in certain cases that local lodges have no authority, without the consent of the supreme lodge to accept assessments after maturity or to extend credit to delinquent members. Eatin v. Supreme Lodge, Fed. Cas. No. 4259a; Brown v. Grand Council, 81 Iowa, 400, 46 N. W. Rep. 1086; Borgraefe v. Supreme Lodge, 22 Mo. App. 120; State v. Ass'n, 42 Mo. App. 485.

Custom and course of dealing will create an estoppe against a mutal benent society to insist on a forfeiture as where it is the usual practice to receive dues within a certain time after the time limit fixed by the by-laws has expired. Railway etc. Ass'n v. Tucker, 157 Ill. 194, 42 N. E. Rep. 398; Odd Fellows, etc., Ass'n v. Sweetzer, 117 Ind. 97, 19 N. E. Rep. 722; Loughridge v. Endowment Ass'n, 84 Iowa, 141, 50 N. W. Rep. 568; National, etc., Ass'n v. Jones, 84 Ky. 110; Kenyon v. Aid Ass'n, 122 N. Y. 247. It is held, however, that the supreme lodge must have knowledge of the custom. Harvey v. Grand Lodge, 50 Mo. App. 472. So also, the insured himself must have had knowledge of the custom. McGowan v. Supreme Council, 76 Hun, 534, 28 N.Y. Supp. 177. Such a custom, however, does not give an insured the right to demand its application in all cases. Jones v. Benefit Ass'n (Ky. 1887), 2 S. W. Rep. 447; National, etc., Ass'n v. Miller, 85 Ky. 88.

JETSAM AND FLOTSAM.

HOW PRESIDENT ANDREW JACKSON COLLECTED A BILL FOR A WIDOW.

Whatever may have been his faults and shortcomings, owing to his inordinate vanity, arrogant and stubborn disposition when once determined upon his course, General Jackson had one weak point by which he might have been led as a lamb to the slaughter, and this fact was never more clearly demonstrated than in the following true little story now printed for the first time.

When Andrew Jackson developed from his army position of general into that of President of the United States he found himself a much sought after man. It did not take him long to learn that while head of the army and the nation, he was regarded by the people as their servant. He was hounded down by men who sought to use him as a tool, and, like his successors

in the office, found it necessary to devote a portion of his waking hours to the public service and shut out self-seekers. To this end he gave strict orders to his messenger at the door to admit only certain persons on a particular day. Despite this peremptory order, however, the attendant bolted into his apartment during the forenoon and informed the general that a person was outside whom he could not control, and who demanded to see the president orders or no orders.

"By the Eternal!" exclaimed the old man nervously. "I won't submit to this annoyance! Who is it?"

"Don't know, sir."

"Don't know? What's his name?" asked the President.

"Beg pardon, sir, it's a woman," replied the man.

"A woman! Show her in," exclaimed the general, promptly.

The next moment there entered the apartment a neatly clad woman of middle age, who courteously advanced toward the old man and accepted the chair offered her.

"Be seated, madam," he said assuringly in a kindly voice.

"Thank you, general," responded the lady throwing aside her veil and revealing a handsome face. 'My mission here to-day, general," she continued, 'is a novel one, and perhaps you can aid me."

"Madam," said the President, who always loved to be called by his military title, "you may command me."

"You are very kind sir; I am a poor woman, general."

"Poverty is no crime, madam," remarked the great man.

"I am a widow, sir, and a clerk in the government employ is indebted to me for board to a considerable amount, which I cannot collect. I need money sadly, and I came to ask if a portion of his pay cannot be stopped from time to time until this claim of mine—an honest one, general, of which he had the full value—shall be paid."

"What is the amount, madam?"

"Seventy dollars, sir. Here is the bill."

"Exactly, I see. And his salary?" asked the President.

"It is said to be twelve hundred a year," she replied.

"And not pay his board bill?" he ejaculated.

"As you see sir—this has been standing five months unpaid. In three days he will draw his monthly pay, and I thought, sir, if you would be kind enough to-"

"Yes, I have it," remarked the general. "Go to him and get his note to-day, for thirty days."

"His note, general?" exclaimed the widow, in surprise. "It wouldn't be worth the paper on which it is written. He pays no one a dollar voluntarily."

"But he will give you his note, madam," calmly remarked the President.

"Oh, yes; no doubt he would be glad to have respite in that way for a month," answered the lady reluctantly.

"That's right, then. Go to him, obtain his note at thirty days, give him a receipt in full and come to me this evening."

The lady departed under the President's orders, called upon the clerk, dunned him for the amount, at which he only smiled and made the usual excuses. Finally she asked him to give his note for the amount at thirty days.

"To be sure," readily replied the clerk.

"You'll pay it when it falls due, sir, thirty days hence, won't you, sir?" asked the lady.

"Yes, certainly; of course I will. I always pay my notes, I do," and as the widow departed the knowing young man believed he had accomplished a very neat trick.

The widow called again upon the President, who asked her, "Did you get the note, madam?"

"Yes, general. Here it is," she replied. The President quickly turned it over and with a dash of his pen wrote upon the back of it the name of the President of the United States.

"Take it to the bank, madam," said the general smilingly, "and you can get the money for it."

She found no difficulty in obtaining the cash for it at sight. One week before the end of the thirty days J. Smith received notice that his note for $70 would be due on the 27th inst., and he was requested to call at the bank and pay the same.

"Ha, ha!" laughed Mr. Smith, and very soon forgot it. Pay day came around again, and he once more received his monthly salary from Uncle Sam—$100.

As he passed down Pennsylvania avenue the note came to his mind again, and he wondered who could have been fool enough to aid the woman. He determined to go to the bank and solve the mystery.

"It was discounted," said the note teller.

"Discounted!" exclaimed the clerk; "who on earth would discount my note?"

"Anybody, with such a backer as you have on this," replied the smiling teller.

"Backer! Me? What backer?" asked the bewildered boarding house cheat.

"Here's the note you see," said the teller, presenting the document, on which the clerk instantly recognized the bold signature of the then President of the United States.

He recognized in that signature the hand of fate, and counted out $70 for the piece of paper. Another paper greeted him next morning at the department, which told him that his services were no longer required to run the government.—*New York World.*

DIFFICULTY OF PROVING A MONOMANIAC'S INSANITY.

"A man may be as crazy as a March hare on some subjects and as wise as a statesman ought to be on others," said Judge Edward Higbee, of Lancaster, Mo., recently. "And all the while he may be enjoying excellent physical health," the judge went on. "Looks unreasonable, eh? I am not speaking from my reading, but from personal observation. Not so many years back—I think it was in 1886—Elder Andrew Hicks, a well-known Baptist exhorter of my county, was haled before the probate court on his wife's application to show cause why a guardian should not be appointed to manage his business affairs. Brother Hicks was sixty-five and had accumulated considerable property. It was charged that the light of his intellect had failed, and that his vast estate stood an excellent chance of going to the dogs unless something was done.

The clear-cut issue of capacity was presented to the jury. As counsel for Brother Hicks I interrogated the applicant's witnesses, and while all averred their honest belief that he was hopelessly insane on religion, they admitted he was superb on a business transaction, and most of them were candid enough to cite instances where the thrifty old preacher had beat them in trades. Several who were acknowledged business failures glibly testified the defendant wasn't mentally able to manage the large property he had created.

Brother Hicks went on the stand in his own behalf, and made a capital witness. His memory was unusually good and his answers were prompt and intelligent.

Then Attorney Payton took hold of him for cross-examination. He held on to the old man for two hours, and nearly every question brought an answer that strengthened Brother Hicks' case. He told of the first dollar he made, how he invested it, how his fortune grew, and his method of business, which was strikingly sound. He gave from memory a list of his notes and the interest due and credits entered on them. I was somewhat astonished at the elaborate detail my client was able to go into. Payton finally hung his head and looked at the floor.

'Is there anything else you want to know Dr. Payton?' Brother Hicks asked, sweetly.

The question seemed to arouse the lawyer. He looked the old Baptist exhorter square in the eye, and shaking his finger menacingly at him, thundered:

'Elder Hicks, answer me now on your solemn oath, are you not John the Baptist, sir?'

Then there was a change in the witness. He threw his arms high above his head, and his eyes blazed with maniacal fire. In a voice many times louder than the question had been put he exclaimed:

'Before God, gentlemen, I was on the Isle of Patmos!'

His frame shook as if swayed by some terrible emotion; his hands clasped convulsively; then he shrank back in his chair and was very quiet. He died in an insane asylum."—*Green Bag.*

CORRESPONDENCE.

WHAT GOES TO MAKE UP A GOOD LAW BOOK—DISCUSSION OF PRINCIPLE OR CITATION OF AUTHORITY.

To the Editor of the Central Law Journal.

Allow me to make a suggestion which may merit the attention of your valued publication, namely: I notice that the tendency of the modern text book writer is to merely give the conclusions of the courts of last resort on a subject. They merely "mouth" the decisions and statutes, and are loth to lay down principle, doctrine or the reason of the law. Most of them might be more properly called digests than treatises on the law. The practitioner is fast falling into the same habit. Instead of going to the pith of the matter with the history, growth and reason of the principle, many an attorney will consume his entire argument by simply citing decisions. Frequently this has a greater tendency to confuse the court than to elucidate the point in question. This tendency is most natural however, in the light of so vast an amount of case law. Yet the fact of so many apparently conflicting decisions, makes it the more essential that an attorney should give the court the reason and spirit of the law. Hardly a case arises but what cases can be found on both sides, but the court can only decide for one side. The court must wend its way through this labyrinth of decisions and reach a conclusion applicable to the question in hand; to this end a good text book is very helpful. But how can a text book be helpful that simply quotes the cases already cited?

I believe there is room for some good paper like the CENTRAL LAW JOURNAL to deal with this question in a manner that may wake up some text writers along this line.

FRED C. SLATER.

Topeka, Kan.

A MATCH CASE.

To the Editor of the Central Law Journal:

Perhaps some of your young readers may find an interest in and care to decide through your columns a case which I have been putting to members of my class, and of which I have received varying solutions:

A, walking through a furniture factory, the floor of which had considerable inflammable material, such as shavings, oils, etc., negligently dropped a match, and, although his attention was called thereto, and to the danger of leaving it there, he made not the slightest effort to remove it, but went away.

B, then coming there also negligently dropped a match, and forthwith made most earnest endeavor to find it and remove it. He actually picked up a match and carried it away, but it was the match which A had dropped.

C came along directly after B had left and stepped upon and ignited the match which B had dropped; a conflagration resulted, and the factory was destroyed.

Who, if any one is, or, if more than one, are liable for the loss?

Yours,

ANDREW W. HIRSCHL.

BOOK REVIEWS.

FLANDERS' LIFE OF JOHN MARSHALL.

The profession is much indebted to the pulishers of Flanders' Life of John Marshall for resurrecting a valuable monograph from unmerited oblivion. This monograph was originally a part of a volume by this same author, entitled "Lives and Times of the Chief Justices." The story of Marshall's life in this series has been generally considered as one of the most comprehensive and authentic ever written, and has been universally referred to and quoted. The fact that "The Lives and Times of the Chief Justices" is now out of print, and therefore not available as a current publication, is considered a further reason to revise and reissue in its new form this standard "Life of Marshall." This book should be in every lawyer's library.

Printed in one volume of 278 pages and published by T. & J. W. Johnson & Co., Philadelphia.

WALKER ON PATENTS.

The law as to patents is one which of all others is the subject of specialism in the legal profession. It is a subject requiring such peculiar qualifications that the general practitioner prefers to turn over a prospective client to a specialist direct or fix up an agreement with the latter to assist in the case on a certain division of the fee. The most authoritative work on this subject is the treatise of Mr. Albert H. Walker, of the New York bar, the fourth edition of which is now before us for review. The fourth edition of Walker on Patents is the only American text-book on patent law which has been published since the third edition was published in 1895; and the third edition, though now long out of print is five years later than any American patent law text-book of any other writer. Thus the fourth edition has no competitor, which is not at least fourteen years older than itself. This is equivalent to saying that the fourth edition has no competitor at all; because congress has enacted eight important statutes, amending the patent laws, and the courts have decided nearly three thousand reported patent cases, during the last fourteen years; and because all those

statutes and cases were taken into careful account in writing the fourth edition of Walker, while none of them were even in existence when the latest text-book of any other writer on American patent law was published. But independent of being fourteen years later than any American patent law text-book of any other author, the primacy of Mr. Walker's book is indicated by the fact that, during the twenty years since the publication of its first edition, it has been cited by the courts as an authority, in two hundred different decisions; a number nearly equal to the citations by those courts, during that time, of all other American and English patent law text-books combined; and much greater than the citations of any text-book on the patent law.

We believe that the considerations just noted fully substantiate the claim of the publishers that this treatise will maintain its place as the standard authority on the subject of which it treats for many years to come.

Printed in one volume of 775 pages and published by Baker, Voorhis & Co., New York.

BOOKS RECEIVED.

A Treatise on the Law of Municipal Ordinances. By Eugene McQuillin, of the St. Louis Bar. 1904. Callaghan & Company, Chicago. Sheep, pp. 1226. Price $6.40. Review will follow.

The Federal Statutes Annotated. Containing all the Laws of the United States of a General and Permanent Nature in force on the first day of January, 1903. Compiled under the Editorial Supervision of William H. McKinney, Editor of the Encyclopedia of Pleading and Practice, and Peter Kemper, Jr. Volume III. Edward Thompson Company, Northport, Long Island, New York, 1904. Sheep. Price $6.00. Review will follow.

A Treatise on Special Subjects of the Law of Real Property. Containing an Outline of all Real Property Law, and More Elaborate Treatment of the Subjects of Fixtures, Incorporeal Hereditaments, Tenures and Alodial Holdings, Uses, Trusts and Powers, Qualified Estates, Mortgages, Future Estates and Interests, Perpetuities and Accumulations. By Alfred G. Reeves, A. M., LL.B. Professor of Law in the New York Law School; Editor of "Reeves' Leading Cases on Wills." Boston: Little, Brown and Company, 1904. Sheep. Price $6.00. Review will follow.

HUMOR OF THE LAW.

A farmer in Cumberland County, Me., was driving across a railroad track when a train killed both his horses and knocked him about ten rods off his course. In the resulting suit for damages the plaintiff was on the witness stand, making out a good case, when the defendant's lawyer asked him:

"Did you take any precaution before driving upon the track?"

The witness seemed reluctant to answer, but, being pressed to do so, finally stammered out:

"Wall, squire, I took a little—just a couple of swallers, that's all."

This started a new line of defense, and it turned out that the couple of swallows were the last in a pint flask that had consoled the honest old farmer along the road. This put a new face on the situation.

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

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4. ADVERSE POSSESSION—Lands Within Congressional Land Grant.—Adverse possession of land within ten-mile limit of grant to Central Pacific Railroad under a claim of right and for the statutory period transferred the title, though patent to the railroad had not been issued.—Toltec Ranch Co. v. Cook, U. S. S. C., 24 Sup. Ct Rep. 166.

5. ALIENS—Naturalization.—On an issue as to whether an alien had been naturalized, the fact that his first papers were not on file, and there was no record of his final papers, held not to raise a presumption of naturalization.—Richardson v. Amsdon, 85 N. Y. Supp. 342.

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8. APPEAL AND ERROR—Bill of Exceptions.—Where a bill of exceptions assigns error on a judgment apparently regular, and does not show what points were decided

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9. APPEAL AND ERROR—Finality of Judgment.—Decree of circuit court of appeals, reversing decree of circuit court sustaining a demurrer to a bill for specific performance and dismissing the bill, held final for purpose of review in the supreme court.—Beasley v. Texas & P. Ry. Co., U. S. S. C., 24 Sup. Ct. Rep. 164.

10. APPEAL AND ERROR—Third Trial. — Where there have been three trials of an action and three successive verdicts for plaintiff, on another trial her right to recover should not be open to question, and the only question submitted should be the amount of recovery.—Southern Ry. Co. v. O'Bryan, Ga., 45 S. E. Rep. 1000.

11. ATTORNEY AND CLIENT — Entering Appearance.—Where an attorney, directed to enter a special appearance, pleads matter operating as a general appearance the client is bound thereby.—McNeal v. Gossard, Kan., 74 Pac. Rep. 628.

12. BANKRUPTCY — Defaulting Trustee not Necessary Party to Action on Bond.—A defaulting trustee in bankruptcy, who was a fugitive from justice, held not a necessary party to an action on his bond.—Alexander v. Union Surety & Guaranty Co , 85 N. Y. Supp. 282.

13. BANKRUPTCY—Fraudulent Conveyance.—An action by a trustee in bankruptcy to set aside conveyances made by a bankrupt with intent to defraud creditors is an action for relief on the ground of fraud, and barred in two years, under Gen. St. 1901, § 4446, subd. 3 —Harrod v. Farrar, Kan., 74 Pac. Rep. 624.

14. BANKRUPTCY—Preferential Payments — An action by a trustee in bankruptcy to recover preferential payment by the insolvent is not an action to recover on the ground of fraud —Baden v. Bertenshaw, Kan., 74 Pac. Rep. 639.

15. BANKS AND BANKING — Oral Representations. — Director of bank, acting for another, held not liable for oral representations as to note discounted, under Comp. Laws 1897, § 9518.—St. Johns Nat. Bank v. Steel, Mich., 97 N. W Rep. 704.

16. BRIDGES—Apportionment of Value. — The cities of Bangor and Brewer cannot complain that the assessment of the value of the Bangor toll bridge was excessive, where it was confirmed by the Chief Justice with the consent of both —State v. City of Bangor, Me., 56 Atl. Rep. 589.

17. BROKERS—Oral Contract of Employment. — A real estate broker cannot recover the reasonable value of his services in procuring a purchaser for defendant's land, where the contract of employment is not in writing.—Jamison v. Hyde, Cal., 74 Pac. Rep. 695

18. CARRIERS—Alighting From Moving Train. — A person alighting from a moving train held guilty of contributory negligence as a matter of law.—Morrow v. Atlanta & C. Air Line Ry. Co., N. Car., 46 S. E. Rep. 12.

19. CARRIERS—Breach of Contract.—In an action for breach of contract, a street car passenger who has been compelled to pay an extra fare held not entitled to recover exemplary damages.—Moon v. Interurban St. Ry. Co., 85 N. Y. Supp. 363.

20. CARRIERS—Duty to Keep Station Open.—A railroad company is bound only to keep its waiting room open for a reasonable time before and after the departure of the train, and ticket holders allowed to remain therein during the night have no cause of action because the same is not kept heated and lighted.—Brown v. Georgia, C. & N. Ry. Co., Ga , 46 S. E Rep. 71.

21. CARRIERS—Mail Pouch Causing Injury to Passenger.—Where a passenger on a train is injured by having his arm struck by a mail pouch suspended by the side of the track, a presumption arises of the carrier's negligence.—McCord v. Atlanta & C. Air Line R. Co., N. Car., 45 S. E. Rep. 1031.

22. CARRIERS — Protection of Passengers. — It is the duty of the railroad company to exercise the strictest diligence to protect passengers from assaults of fellow passengers after the latter have alighted at their destination.—Spangler v. St. Joseph & G. I. Ry. Co., Kan., 74 Pac. Rep. 667.

23. CARRIERS—Refusal to Transport Lunatics. — Common carriers cannot absolutely refuse to transport insane persons, but may insist that they be properly attended and sufficiently restrained. — Owens v. Macon & B. R. Co., Ga , 46 S. E. Rep. 87.

24. CHARITIES—Establishment of Pay-Pupil Department in Defiance of Donor's Will. — Corporation organized for the support and education of orphan and destitute children cannot establish pay-pupil department in defiance of the will of the donor. — Rankine v. De Veaux College, 85 N. Y. Supp. 239.

25. CHATTEL MORTGAGES — Consideration. — Where owners of personalty sold it for an adequate consideration to parties who did not acquire it in good faith, a subsequent mortgagee of the vendee, without notice of any fraud, is an innocent purchaser.—Sparks v. Galena Nat Bank, Kan., 74 Pac. Rep. 619.

26. COMMERCE—Limiting Liability for Negligence.—No unlawful regulation of interstate commerce is made by a refusal of state court to limit liability of carrier for negligence in the execution of a contract for interstate commerce to the valuation agreed upon. — Pennsylvania R. Co. v. Hughes, U. S. S. C., 24 Sup. Ct. Rep. 132.

27. COMMERCE—Validity of License Tax.—License tax, imposed by Laws N.Car. 1901, p. 116, § 52, on those engaged in selling sewing machines in the state, held an unconstitutional interference with interstate commerce, as applied to the sale of a single machine shipped into the state by a nonresident corportion under a C. O. D. consignment.—Norfolk & W. Ry Co. v. Sims, U. S. S. C., 24 Sup. Ct. Rep. 151.

28. CONSTITUTIONAL LAW—Change of City Boundaries. —Laws 1897, p. 487, ch. 267, providing that parties desiring to remove any tract of land from the corporate limits of the city shall petition for such removal, held unconstitutional, as conferring legislative powers on such petitioners.—City of Hutchinson v. Leimback, Kan., 74 Pac. Rep. 598.

29. CONSTITUTIONAL LAW—Mechanic's Lien.—Gen. St. 1901, § 5125, providing that, in mechanic's lien actions brought by any artisan or day laborer, plaintiff may recover a reasonable attorney's fee, is unconstitutional, as denying the equal protection of the laws.—Atkinson v. Woodmansee, Kan., 74 Pac. Rep. 640.

30. CONSTITUTIONAL LAW—Proceeds of Municipal Licenses.—St. 1903, p. 190, ch. 102, §20, subd. 9, relative to disposition of money received from licenses, held unconstitutional as a taking of private property without due process of law or just compensation.—State v. Boyd, Nev., 74 Pac. Rep. 654.

31. CONTRACTS—False Representations.—Signing contract without reading it held not to preclude defense of false representation as to its contents. — Frank V. Strauss & Co. v. Welsbach Gas Lamp Co., 85 N. Y. Supp. 367.

32. CORPORATIONS — Director as Broker.—The rule that forbids officer of a corportion to profit by a transaction in which his interests may be inconsistent with the corporation's held applicable to a case where one received commissions for bringing about lease of property to a corporation of which he was a director.—Goldshear v. Barron, 85 N. Y. Supp. 395.

33. COSTS—Pauper Affidavit.—Inability to pay was no answer to a plea that a suit should be abated because costs on a previous dismissal or nonsuit had not been paid.—Johnson v. Central of Georgia Ry. Co., Ga., 45 S. E. Rep. 988.

34. CRIMINAL EVIDENCE—Competency of Witness.—A person, having arrived at an age competent to testify, may give evidence as to his own age, though his knowledge be based on hearsay.—Loose v. State, Wis., 97 N. W. Rep. 526.

35. CRIMINAL EVIDENCE—Dialogue Between Counsel and Witness at Former Trial.—Exclusion from the evidence of the official stenographer's notes of a dialogue between counsel and a witness at a former trial held not error.—Smith v. State, Ga., 46 S. E. Rep. 79.

36. CRIMINAL EVIDENCE—Testimony of Accomplice.—A conviction may be had on the unsupported testimony

of an accomplice.—State v. Register, N Car., 46 S. E. Rep. 21.

37. CRIMINAL TRIAL — Conduct of Jury. — It is no ground for reversal of a conviction of murder in the first degree that the jury, during the recess of the court, could look from the jury room into the jail and see the prisoner playing cards.—Commonwealth v. Zillafrow, Pa., 56 Atl. Rep. 539.

38. CRIMINAL TRIAL—Homicide.—On a prosecution for murder, held, that the court should have instructed that defendant might rely on the state's evidence for the mitigation of the homicide or for an acquittal.—State v. Castle, N. Car., 46 S. E. Rep. 1.

39. DAMAGES — Action to Quiet Title to a Spring.—Where, in an action to quiet title to a spring, defendant failed to prove damages suffered by defendant's acts with reasonable certainty, a finding assessing damages in favor of plaintiff was erroneous.—Orient Min. Co. v. Freckleton, Utah, 74 Pac. Rep. 652.

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41. DEDICATION—By Whom Made.—An owner of property cannot, by selling the same with reference to a map, dedicate property not owned by him as a street, nor does his grantee acquire any easement in such property.—Klug v. Jeffers, 85 N. Y. Supp. 423.

42. DESCENT AND DISTRIBUTION—Title to Personalty.—Where an heir seeks to recover personal property of his ancestor, he must show that the title to the rest was duly transferred to him by the legal representatives of such ancestor.—McKenney v. Minahan, Wis., 97 N. W. Rep. 489.

43. DISMISSAL AND NONSUIT—Action to Relitigate Question Previously Decided.—An action to relitigate a question which had been previously decided, and which the supreme court had prohibited the trial court from reopening, was properly dismissed, on motion, as impertinent, vexatious and contemptuous. — Kirby v. Pease, Wash., 74 Pac. Rep. 665.

44. DOWER—Contingent Interest.—The contingent interest of the wife on the death of her husband in his real property, may be defended by her in an action against both husband and wife to quiet title to the land. —Minneapolis & St. L. R. Co. v. Lund, Minn., 97 N. W. Rep. 452.

45. EASEMENTS—Way of Necessity. — A lumber company held not entitled to a way of necessity over the land of a stranger to the title to its land sought to be opened by such way.—Healy Lumber Co. v. Morris, Wash., 74 Pac. Rep. 681.

46. EMINENT DOMAIN—Private Use.—Laws 1899, p. 255, ch. 130, authorizing condemnation of land for log roads, held a taking of private property for private use, in violation of Const. art. 1, § 16.—Healy Lumber Co. v. Morris, Wash., 74 Pac. Rep. 681.

47. EQUITY—Nullum Tempus. — The rule of *"nullum tempus"* cannot be invoked by the French republic to answer defense of laches in a suit to enforce an exclusive right to the use of the word "Vichy," where it entered into an 80-year lease of such springs to its coplaintiff, which lease has still 30 years to run.—La Republique Francaise v. Saratoga Vichy Spring Co., U. S. S. C., 24 Sup. Ct. Rep. 145.

48. EVIDENCE—Bill of Sale.—A bill of sale, which describes certain notes and mortgages, held *prima facie* sufficient to convey title to the notes and mortgages, and admissible as evidence of the grantee's ownership.—Persons v. Persons, N. Dak., 97 N. W. Rep. 551.

49. EVIDENCE—Declarations of Agent. — Declaration of agent, in possession of realty to manage the same are inadmissible against principal to disparage his title.—Sweeney v. Sweeney, Ga., 46 S. E. Rep. 76.

50. EVIDENCE—Judicial Notice.—The court will take judicial notice that a city of the state is of the first class.—City of Ft. Scott v. Elliott, Kan., 74 Pac. Rep. 609.

51. EVIDENCE—Larceny.—Evidence that hogs stolen were worth $12 to $15 each, and that two answered the description in the information, held to sustain a conviction under Rev. Pen. Code, § 608, defining grand larceny.—State v. Montgomery, S. Dak., 97 N. W. Rep. 716.

52. EVIDENCE—Legislative Journals.—Journals of the General Assembly, when competent as evidence, import absolute verity, and cannot be explained or altered by parol.—Town of Wilson v. Markley, N. Car., 45 S. E. Rep. 1023.

53. EVIDENCE — Written Contract.—Where an agent makes a contract for sale of personalty in writing, evidence of prior conversations is inadmissible to show that a sale absolute on its face was conditional.—Bass Dry Goods Co. v. Granite City Mfg. Co., Ga., 45 S. E. Rep. 980.

54. EXCHANGE OF PROPERTY—Breach of Contract.—In an action for damages for the breach of a contract for the exchange of real estate, occasioned by defendant's failure to convey, the existence of a mortgage on plaintiff's land held a defense.—Godfrey v. Rosenthal, S. Dak., 97 N. W. Rep. 365.

55. EXECUTION—Property in Custodia Legis.—Property taken from an officer by replevin and returned to him under a redelivery *in* bond is *custodia legis*, and the sale of it under an execution pending the replevin will be enjoined.—Overton v. Warner, Kan., 74 Pac. Rep. 651.

56. EXECUTORS AND ADMINISTRATORS.—Commissions. —An executor held entitled to commissions on an expenditure for the erection of permanent improvements on land belonging to testator's children, necessary for the proper cultivation thereof.—Lambertson v. Vann, N. Car., 46 S. E. Rep. 10.

57 EXECUTORS AND ADMINISTRATORS—Limitations.—An action by an heir against an administrator for realty purchased at his own sale should ordinarily be brought within seven years from the date of the sale.—Griffin v. Stephens, Ga., 46 S. E. Rep. 66.

58 EXECUTORS AND ADMINISTRATORS—Limitations — Action for reasonable value of services performed in the family of another matures on completion of services without a demand for payment, and outlaws six years from that time, under St. 1898, § 4222.—*In re* Sheldon's Estate, Wis., 97 N. W. Rep. 524.

59. EXECUTORS AND ADMINISTRATORS—Sale of Reversionary Interest.—An administrator may, to pay debts, sell under an order of court, the reversionary interest in land of the estate in which a homestead has been set apart under the constitution of 1868 to the decedent's widow.—Williams v. O'Neal, Ga., 45 S. E. Rep. 978.

60. EXECUTORS AND ADMINISTRATORS — Stated Account.—Where plaintiff desires to charge defendant administrator on an account, he must set forth the grounds of liability with the same certainty as in a bill in equity; and defendant must set up his defense with the same degree of certainty.—Tate v. Gairdner, Ga., 46 S. E. Rep. 73.

61. FALSE IMPRISONMENT—Abuse of Process.—In an action for malicious use of bail process, it is sufficient to allege that plaintiff was arrested and restrained of his liberty.—Woodley v. Coker, Ga., 46 S. E. Rep. 89.

62. FIRE INSURANCE—Iron Safe Clause.—The "iron-safe-clause," requiring the insurer to make an inventory of his stock and keep books in an iron safe, is reasonable and valid.—Maupin v. Scottish Union & National Ins. Co., W. Va., 45 S. E. Rep. 1003.

63. FRAUDS, STATUTE OF—Oral Contract as Affected by Part Payment.—Part payment of the purchase price is insufficient to take an oral contract for the purchase of realty out of the statute of frauds.—Leis v. Potter, Kan., 74 Pac. Rep. 622.

64. FRAUDS, STATUTE OF—Unilateral Contract.—A unilateral contract, within the statute of frauds, becomes binding on the party not originally bound, if he does any

act which would take the transaction out of the statute so far as he is concerned.—Sivell v. Hogan, Ga., 46 S. E. Rep. 67.

65. FRAUDS, STATUTE OF—Vendor's Lien.—The equitable right of a vendor of real estate to a vendor's lien is merely a right to ask equity to enable him to acquire an interest in land —Halvorsen v. Halvorsen, Wis., 97 N. W. Rep 494.

66. FRAUDULENT CONVEYANCES—Knowledge of Grantee' —An insolvent may convey property to a relative, having no knowledge of the grantor's debt, and the transaction will be upheld; the consideration being adequate.—Parmenter v. Lomax, Kan., 74 Pac. Rep. 634.

67. GUARANTY - Pleading.—In a suit against a guarantor, no formal plea of payment is necessary to warrant admission of evidence that the principal debtor has paid the debt guarantied.—Bank of Wrightsville v. Merchants' & Farmers' Bank, Ga., 46 S. E Rep. 94.

68. HABEAS CORPUS—Matters Reviewed.—In order to render a judgment immune from attack on *habeas corpus*, the court must have had, not only jurisdiction of the subject matter and of the person, but also to render the particular judgment in question.—State v. Baeverstad, N. Dak., 97 N. W. Rep. 548.

69. HEALTH—Small-Pox Patient.—Defendant, afflicted with smallpox, held not liable for the medical services rendered under Pol. Code, §§ 1472-1474.—Smith v. Hobbs, Ga., 45 S. E. Rep. 963.

70. HOMICIDE—Manslaughter. — On a prosecution for murder, an instruction that, if defendants entered into a sudden quarrel with the deceased parties, the killing would amount to manslaughter, held error.—State v. Castle, N. Car., 46 S. E. Rep. 1.

71. HOMICIDE—Self-Defense. — One assailed held entitled to self defense, if he has reasonable ground to fear death or great bodily injury, though the danger is not real.—State v. Miller, Oreg., 74 Pac. Rep. 658.

72. HUSBAND AND WIFE—Community Property.—Where real estate is the community property of the husband and wife, the wife's separate mortgage thereof, and the proceedings for the foreclosure of the mortgage, are invalid. —Humphries v. Sorenson, Wash., 74 Pac. Rep. 690.

73 HUSBAND AND WIFE—Goods Supplied on Wife's Personal Credit.—A husband is not liable for goods furnished his wife on her own personal credit, even though they are necessaries.—Martin v. Oakes, 85 N. Y. Supp. 887.

74. HUSBAND AND WIFE—Physician's Action for Services.—Where, in an action by a physician, it appears that defendant was a married woman having a separate estate, and plaintiff testifies that she agreed to be responsible for his services, it is error to direct a verdict for defendant.—Trentham v. Waldrop, Ga., 45 S. E. Rep. 988.

75. INDICTMENT AND INFORMATION — Misdemeanor.—There is nothing in the constitution of the state or of the United States which guaranties to a person charged with a misdemeanor the right to indictment by the grand jury. —Green v. State, Ga., 45 S. E. Rep. 990.

76. INJUNCTION—Conflicting Evidence. — A denial by defendant of the facts set up in the equitable petition for an injunction, or a conflict in the evidence, does not necessarily require a refusal of the interlocutory relief.—Everett v. Tabor, Ga., 46 S. E Rep. 72.

77. INJUNCTION—Strikes.—Members of labor organizations may quit the service of their employer to better their condition, and by peaceable means persuade others to join them, and refuse to allow their members to work in places where nonunion labor is employed.—Gray v. Building Trades Council, Minn., 97 N. W. Rep. 663.

78. INTOXICATING LIQUORS—Illegal Sale.—Where an act makes it penal to sell liquor in a certain county, and the legislature makes certain exceptions, it is not necessary, in an indictment under the original act, to allege that the accused is not within the exceptions.—Tigner v. State, Ga., 45 S. E. Rep. 1001.

79. JUDGMENT—Action for Commissions. — A judgment in an action by a broker for a commission on a lease of property held no bar to a subsequent suit by his assignee for commissions on a sale following the lease.—Goldshear v. Barron, 85 N. Y. Supp. 895.

80. JUDGMENT—Assignment.—A joint owner of a judgment may assign his undivided interest therein, and his assignee can redeem from a prior lien to the same extent as his assignor.—Hunter v. Mauseau, Minn., 97 N. W. Rep. 651.

81. JUDGMENT—Bar to Action.—A judgment in favor of defendant in an action for the contract price of a boiler furnished held not a bar to an action for the reasonable value of the boiler.—Manitowoc Steam Boiler Works v. Manitowoc Glue Co., Wis., 97 N. W. Rep. 515.

82. JUDGMENT—Costs of Former Suit.—Where a second suit is dismissed because costs of a former suit for the same cause of action had not been paid, it is no bar to a third suit for the same cause of action, brought after payment of costs.—Sweeney v. Sweeney, Ga., 46 S. E. Rep. 76.

83. JUDGMENT—Obtained by Fraud.—Equity will relieve against a judgment properly rendered, where the losing party has a meritorious defense, and is prevented by the fraud of the other from entering an appeal, or moving for a new trial.—Everett v. Tabor, Ga., 46 S. E. Rep. 72.

84. JURY—Disqualification of Sheriff.—A sheriff is not disqualified to summon a special venire in a murder case by the fact that he has been subpœnaed as a witness by the commonwealth. — Commonwealth v. Zillafrow, Pa., 56 Atl. Rep. 539.

85. JURY—Objections to Venire. — A defendant, who had failed to exhaust his peremptory challenges, held not entitled to complain of the court's conduct in rejecting, as not freeholders, the names of certain persons drawn on a special venire, under Code, §§ 913, 914.—State v. Register, N. Car., 46 S. E. Rep. 21.

86. JUSTICES OF THE PEACE—Filing Amended Undertaking on Appeal.—County court held to have jurisdiction to permit the filing of an amended undertaking on appeal from justice court, on motion, before dismissal of the appeal.—Wasem v. Bellach, S. Dak., 97 N. W. Rep. 718.

87. JUSTICES OF THE PEACE—New Trial. — Where the record clearly shows that the verdict in a justice court was not demanded by the evidence and the law, the first grant of a new trial will not be disturbed. — Lovyorn v. Jones, Ga., 46 S. E. Rep. 92.

88. JUSTICES OF THE PEACE—Void Judgment. — Defendant, against whom a verdict of a jury for plaintiff was copied in the justice's docket as a judgment, held entitled to have the supposed judgment quashed. — Beach v. Lavender Bros., Ala., 35 So. Rep. 852.

89. LANDLORD AND TENANT — Attachment of Crop.—Where a landlord's attachment on the crops is maintainable, and the crop has been sold by order of the court, it should direct payment of landlord's share out of the proceeds of the sale.—Harmon v. Payton, Kan., 74 Pac. Rep. 618.

90. LANDLORD AND TENANT—Breach of Covenants as Affecting Renewal Term.—The failure of lessors to insist upon a forfeiture for breach of the covenants of a lease held not to preclude them from refusing a renewal. — Swift v. Occidental Mining & Petroleum Co., Cal., 74 Pac. Rep. 700.

91. LANDLORD AND TENANT - Failure to Repair.—Where defendant, in distress, attempts to set off damages for failure of landlord to repair, evidence as to whether he contracted with a third person to make the repairs is immaterial.—Aikin v. Perry, Ga., 46 S. E. Rep. 98.

92. LARCENY—Indictment.—An indictment charging the theft of one horse of the female sex, said animal being a dark bay mare held sufficiently specific as to the character of the animal —Teal v. State, Ga., 45 S. E. Rep. 964.

93. LIBEL AND SLANDER—Criticisms of Public Officers.

—A citizen has a legal right to comment fairly upon the conduct of public officers.—Herringer v. Ingberg, Minn., 97 N. W. Rep. 460.

94. LICENSES—Validity of Statute.—Laws 1903, p. 249, ch. 190, imposing a tax on peddlers, if construed as imposing a tax on occupations, held not in conflict with const. art. 6, § 17, requiring equality and uniformity in taxation.—*In re* Watson, S. Dak., 97 N.W. Rep. 463.

95. LIMITATION OF ACTIONS — Mortgagee in Possession.—A tenant of mortgaged land, who obtained a tax deed and thereafter denied the title of the mortgagor, his landlord, held not entitled to the rights of a mortgagee in possession.—Morford v. Wells, Kan., 74 Pac. Rep. 615.

96. LIMITATION OF ACTIONS—Suit Ten Years after Minor's Majority.—Limitations, as to adverse possession, do not run against persons while under disability; and an action to recover real estate, brought within 10 years after minors arrive at age, is commenced in time.—Albers v. Kozeluh, Neb., 97 N. W. Rep. 646.

97. MARITIME LIENS—Dual Agency.—The fact that agent for sale of shipbuilding materials acted also as agent for shipbuilder held not to affect right of owner of materials to a lien for portion used in construction of vessel.—Callahan v. Aetna Indemnity Co., Wash., 74 Pac. Rep. 693.

98. MASTER AND SERVANT—Fellow Servants.—A brakeman and a conductor in charge of a construction train held not fellow servants.—Grout v. Tacoma Eastern R. Co., Wash., 74 Pac. Rep 665.

99. MECHANICS' LIENS—Bankruptcy.—Order of court in bankruptcy proceedings, authorizing the acceptance of a smaller sum in full of a claim due the bankrupt, held not to affect the right of one, to whom the claim was assigned prior to the bankruptcy proceedings, to recover thereon —Kudner v. Bath, Mich , 97 N. W. Rep. 685.

100. MECHANICS' LIENS—Payment to Building Contractor.—Where a claim of lien has been filed and recorded, the owner must see that the materialman or laborer is paid out of the money paid by him to the contractor.—Green v. Farrar Lumber Co., Ga., 46 S. E. Rep. 62.

101. MECHANICS' LIENS—Sufficiency of Notice —A notice of a mechanic's lien, which states that the amount claimed is for the "agreed price or value," is insufficient, because of the alternative statement. — Villaume v. Kirchner, 85 N. Y. Supp. 377.

102. MINES AND MINERALS—Landlord and Tenant.—That lessors acquiesced in the use of petroleum from leased land as fuel without accounting held at least a waiver by them of their right.—Swift v. Occidental Mining & Petroleum Co., Cal., 74 Pac. Rep. 700.

103. MINES AND MINERALS—Written Terms.—In the absence of stipulations to that effect, a contract granting the right of operating for oil and gas cannot be forfeited for a breach of one of its terms.—Rose v. Lanyon Zinc Co., Kan., 74 Pac. Rep. 625.

104. MORTGAGES — Defective Foreclosure. — Where a mortgage was defectively foreclosed, the mortgagor can recover possession only by payment of the amount due on the mortgage debt.—Chambers v. Bookman, S. Car., 46 S. E. Rep. 39.

105. MORTGAGES—Deficiency Judgment. — Only such defenses as accrue after judgment in foreclosure can be interposed against a deficiency judgment entered after report of the sale of the premises.—Carstens v. Eller, Neb., 97 N. W. Rep. 631.

106. MORTGAGES—Description. — Where extrinsic evidence is necessary to identify land described in a mortgage which has been foreclosed, and a claim is interposed to the levy of the execution, the burden is on plaintiff in execution to identify the land by extrinsic proof.—Johnson v. McKay, Ga., 45 S. E. Rep. 992.

107. MORTGAGES—Dispossession.—A mortgagee in possession after condition broken cannot be dispossessed without payment of the debt, unless his possession was acquired under inequitable circumstances.—Stouffer v. Harlan, Kan., 74 Pac. Rep. 610.

108. MORTGAGES—Equitable Lien on Insurance.—Where the owner of real estate binds himself in a mortgage to insure for the protection of the mortgagee, the latter has an equitable lien on the money due on the policy taken out by the mortgagor.—Hyde v. Hartford Fire Ins. Co., Neb., 97 N. W. Rep. 629.

109. MORTGAGES—Foreclosure Sale. — Where a mortgage covered two lots, that both were on foreclosure appraised together is not a matter of which the mortgagor can complain.—Tichey v. Simecek, Neb., 97 N. W. Rep. 823.

110 MUNICIPAL CORPORATIONS—Annexation of Territory.—The obligation resting on territory annexed to a city to pay taxes for the purpose of paying a prior indebtedness of the city held supported by equitable consideration.—Toney v. City of Macon, Ga., 46 S. E. Rep. 80.

111. MUNICIPAL CORPORATIONS—Bond Issue —Although a city may refund bonded debt without submission to popular vote, if it desires to submit in accordance with special legislative act, it must follow provision of act.—City of Asheville v. Webb, N. Car., 46 S. E. Rep. 19.

112. MUNICIPAL CORPORATIONS Injunction to Prevent Gratuitous Use of City's Auditorium.—An owner of an opera house held not entitled to maintain suit to enjoin city from allowing entertainments for private profit in the city's auditorium, though wrongful and interfering with his profits.—Amusement Syndicate Co. v. City of Topeka, Kan., 74 Pac. Rep. 606.

113. MUNICIPAL CORPORATIONS—Mode of Electing Police Judge.—Where a city office is created by statute, but no mode of election thereto prescribed, held, election may be such as the mayor and alderman may choose.—Rich v. McLauren, Miss., 35 So. Rep. 337.

114. MUNICIPAL CORPORATIONS — Notice of Claim.—A notice of a claim for wrongful death to a village held not objectionable on the ground that one gross amount was demanded for claims of several relatives for damages.—Hunter v Village of Ithaca, Mich., 97 N. W. Rep. 712.

115 MUNICIPAL CORPORATIONS — Water and Electric Plants.—Erection of water and electric light plants held necessary expenses of a city, which, under Const. art. 7, § 7, need not be approved by popular vote, but, under Code, §§ 3800, 3821, the city may contract debts for.—Fawcett v. Town of Mt. Airy, N. Car., 45 S. E. Rep. 1029.

116. NEGLIGENCE—Explosion of Steam Boiler.—In an action for injuries caused by explosion of boiler in adjoining premises, defendant must show that the repairs to the boiler were made by competent mechanics, and that after the repairs the boiler was inspected by competent inspectors.—Anderson v. Hays Mfg. Co., Pa., 56 Atl. Rep. 345.

117. NEGLIGENCE — Injury to Licensee. — A licensee could recover for injuries by defendant's negligence while he was on his premises, though the act was not reckless, willful, or grossly negligent.—Horton & Smith v. Harvey, Ga., 46 S. E. Rep. 70.

118. NEGLIGENCE—Invitation to Use Bridge.—Where one knowingly leaves open his property under circumstances leading others to think that they are invited to use it, he assumes an obligation to keep it in a reasonably safe condition.—Lawson v. Shreveport Waterworks Co., La., 35 So. Rep. 390.

119. NEGLIGENCE—Lost Profits.—Where engine used in a contract of partnership for operating a threshing machine fell through a bridge, the partner who was not the owner of the engine could not recover from the county his profits lost thereby.—Foster v. Board of Lyon County Comrs., Kan., 74 Pac. Rep. 595.

120. NEW TRIAL — Joint Motion.—A joint motion for new trial, in which parties who disclaim are included, will be sustained as to those who do not disclaim, if the grounds are sufficient. — Equitable Mortg. Co. v. Gray Kan., 74 Pac. Rep. 614.

121. PARTITION — Family Meeting. — Where a family meeting advised a partition, and the decision is homologated, it furnishes sufficient authority for the tutor of the minors to provoke a sale for the purpose. — Friedrich v. Friedrich, La , 35 So. Rep. 371.

122. PARTNERSHIP—Dissolution.—Selling partner held entitled to injunction restraining the other from altering the status of the assets, and to have a receiver appointed to take charge of the same under the orders of the court.—Joselove v. Bohrman, Ga., 45 S. E. Rep. 982.

123. PLEADING—Withdrawal of Assignment After Demurrer has Been Sustained.—Where a demurrer to a plea is properly sustained for its failure to answer one of the three assignments against which it is directed, a subsequent withdrawal of that assignment does not put the court in error.—United States Fidelity & Guaranty Co. v. Dampskibsaktieselskabet Habil, Ala., 35 So. Rep. 344.

124. PRINCIPAL AND AGENT—Dual Agency. — The fact that agent for sale of shipbuilding materials thereafter took contract to construct a vessel held not to release him as agent of the owner of the materials for purpose of selling them. — Callahan v. Ætna Indemnity Co., Wash., 74 Pac. Rep. 693.

125. PRINCIPAL AND SURETY—Extension of Time for Payment.—Sixty-day extension of time for payment of bill for materials furnished principal obligor held not to discharge surety on bond for faithful performance of original contract and prompt payment for labor and materials —United States Fidelity & Guaranty Co. v. United States, U. S. S. C., 24 Sup. Ct. Rep. 142.

126. RAILROADS—Debts of Consolidated Road.—Where there has been a merger of a railroad corporation, and no provision for the payment of the debts, the consolidated corporation is liable for such debts to the extent of the value of the property received. — Hawkins v. Central of Georgia Ry. Co., Ga., 46 S. E. Rep. 82.

127. RAILROADS—Stop, Look and Listen.—In the absence of evidence to the contrary, there is a presumption that a pedestrian stopped, looked, and listened before crossing railroad track.—Baltimore & P. R. Co. v. Landrigan, U. S. S. C., 24 Sup. Ct. Rep. 137.

128. RECEIVERS—Appointment in Equitable Action.—The appointment of a receiver in an equitable action is provisional in its character, and incidental to the main object of the suit.—Vila v. Grand Island Electric Light, Ice & Cold Storage Co., Neb., 97 N. W. Rep. 613.

129. SALES—Breach of Warranty.—A collateral agreement of warranty is not available in defense to an action on a written contract containing no warranty, but only, at most, by way of counterclaim.—Atwater v. Orford Copper Co., 85 N. Y. Supp. 426.

130. SALES — Misrepresentation. — After a vendor's refusal to take back a horse sold by misrepresentation, the vendee's sale of it, without notice to the vendor, determines his election to stand on the contract. — Barrett v. Tyler, Vt., 56 Atl. Rep. 534.

131. SALES—Time Limit for Delivery Waived. — Unconditional acceptance and receipt by buyer, as such, of so much lumber as is delivered to them, and dealing with it as their own property, held a waiver of time limit in contract for its delivery, and of any deficiency in quantity.—Heidelbaugh v. Cranston, Del., 56 Atl. Rep. 367.

132. SEQUESTRATION—Right of Sale Pending Proceedings.—Where, in sequestration, defendant gives a bond, under Rev. St. 1895, art. 4874, he is not entitled to sell the property pending the sequestretion proceedings.—Crawford v. Southern Rock Island Plow Co., Tex., 77 S. W. Rep. 280.

133. SET-OFF AND COUNTERCLAIM—Co-Operation Telephone Company.—In an action to recover a penalty against a telephone company for refusal of service, under Burns' Rev. St. 1901, §§ 5512, 5529, a subscriber held not entitled to raise an issue of set-off, for the purpose of showing that he was not indebted to the telephone company.—Irvin v. Rushville Co-Operative Telephone Co., Ind., 69 N. E. Rep. 258.

134. SHERIFFS AND CONSTABLES—Distress Warrant.—Where a distress warrant has been levied, and an execution on a mortgage on the same property was given to the sheriff, if the distress warrant was invalid, it was for the mortgagee to resist it, and not the sheriff.—Camp v. Williams Bros., Ga., 46 S. E. Rep. 66.

135. SHERIFFS AND CONSTABLES — Unauthorized Removal of Property.—In an action against a city marshal for removing a tenant's property from a part of the building not authorized by the warrant, whether the property was so removed held a question for the jury.—Moriarity v. Wagner, 84 N. Y. Supp. 864.

136. SHIPPING—Agreement of Charterer.—Though a charterer agreed to return a vessel in as good condition as when received, his liability does not extend to depreciation resulting from unseaworthiness. — Auten v. Bennett, 84 N. Y. Supp. 689.

137. SHIPPING — Home Port of Vessel. — Allegations that a Maine corporation, the owner of a vessel, had its principal place of business in Boston, and that the vessel was there enrolled, are not sufficient to show that Boston was the home port of the vessel.—The New Brunswick, U. S. D. C., D. Mass., 125 Fed. Rep. 567.

138. SPECIFIC PERFORMANCE—Gift of Land.—A son, to whom a father had given land, who entered into possession and made valuable improvements, can maintain specific performance, and have deeds made by his father to another canceled.—Hadaway v. Smedley, Ga., 46 S. E. Rep. 96.

139. STATES—Boundaries.—The main channel of the Mississippi river, which is the boundary line between Wisconsin and Minnesota, may be very near the Minnesota shore at some points and Wisconsin at other points, according to the location of the main navigable channel —Franzini v. Layland, Wis., 97 N. W. Rep. 499.

140. STATUTES—Publication.—Where a general act provides that it shall take effect after its publication in the official city paper, it will become operative after publication in the official state paper under Gen. St. 1901, § 6750.—State v. City of Topeka, Kan., 74 Pac. Rep. 647.

141. STREET RAILROADS — Collision with Carriage. — Street car company held liable for injuries to driver or pedestrian for failure to keep lookout and give warning, though the car was running at reasonable speed, and though driver used every means to avert the injury.—South Covington & C. St. Ry. Co. v. McLean, Ky., 77 S. W. Rep. 202.

142. STREET RAILROADS—Speed of Car.—That a street car company ran its car at the same rate as usual at the place where an injury occurred, though faster than was usual in other parts of the city, was not negligence —Warner v. St. Louis & M. R. R. Co., Mo., 77 S. W. Rep. 67.

143. TAXATION—Action to Record.—A complaint to recover taxes paid by plaintiff held not to show that it was not a franchise from a city, but a nontaxable federal franchise, that was taxed —Western Union Tel. Co. v. San Joaquin County, Cal., 74 Pac. Rep. 856.

144. TAXATION—Assessment Made by De Facto Board.—A tax assessed by a *de facto* board of assessors, or by a board one of whose members is a *de facto* assessor, is void and uncollectible.—Inhabitants of Springfield v. Butterfield, Me., 56 Atl. Rep. 581.

145. TAXATION—Foreclosure of Lien.—Where, in proceedings to foreclose tax lien, the land is properly made a party, and jurisdiction is acquired by publication, a sale on foreclosure bars all pre-existing interests or liens.—Butler v. Copp, Neb., 97 N. W. Rep. 634.

146. TAXATION—Judgment for Poll Tax Against One not a Party to Action.—Where a judgment for taxes includes the poll tax of one not a party to the action, this portion of the judgment will be stricken out on appeal.—City of Wilmington v. McDonald, N. Car., 45 S. E. Rep. 864.

147. TAXATION—Reversal of Decree in Tax Sale.—Where decree in foreclosure of a tax lien erroneously denies statutory time to redeem, the remedy is by direct proceedings to obtain a reversal of the decree.—Logan County v. McKinley-Lanning Loan & Trust Co., Neb., 97 N. W. Rep. 642.

148. TAXATION—Setting Aside Sale.—Under the law providing that the lien of the state for taxes shall continue until payment thereof, a void sale for taxes does not discharge the lien.—Auditor General v. Newman, Mich., 97 N. W. Rep. 703.

149. TELEGRAPHS AND TELEPHONES—Mental Anguish in Action for Tort.—Damages for mental anguish occasioned by delay in delivering a telegram cannot be recovered in an action in tort, unless there are other damages resulting from the negligence.—Western Union Telegraph Co. v. Brocker, Ala., 35 So. Rep. 468.

150. TELEGRAPHS AND TELEPHONES—Rules Regulating Payment of Tolls.—A rule of a telephone company requiring payment of an indebtedness on or before the 5th day of the month succeeding the maturity thereof, on pain of denial of service, held reasonable.—Irvin v. Rushville Co-Operative Telephone Co., Ind., 69 N. E. Rep. 258.

151. TENANCY IN COMMON—Adverse Possession.—Possession of a tenant in common, after his co-tenant had given a deed of the whole tract to another, held to be hat of the grantee; there being no actual ouster of him.—Merryman v. Cumberland Paper Co , Md., 56 Atl. Rep. 364.

152. TRADEMARKS AND TRADENAMES — Unfair Competition.—The exclusive right to the use of the word "Vichy," under which the waters of a spring in France have been known for centuries, belongs to the owners of such springs —La Republique Francaise v. Saratoga Vichy Spring Co., U. S. S. C., 24 Sup. Ct. Rep. 145.

153. TRIAL—Duty to Re-Introduce Rejected Evidence.—Rejected incompetent evidence, being made competent by subsequent evidence, should thereafter be offered again.—Saucier v. New Hampshire Spinning Mills, N. H., 56 Atl. Rep. 545.

154. TRIAL—Error in Granting Non-Suit.—It is reversible error to grant a nonsuit, where plaintiff has made a *prima facie* case.—Kroetch v. Empire Mill Co., Idaho, 74 Pac. Rep. 868.

155. TRIAL—Illegal Evidence Cannot be Excluded by Party Introducing.—Where illegal evidence is adduced, the party presenting it cannot afterwards move to exclude it.—Hunnicutt v. Higginbotham, Ala., 35 So. Rep. 469.

156. TRUSTS—Estoppel to Deny.—A deed, insufficient to create an express trust, held enforceable as against the trustee, in an action brought by him, in which he pleaded the existence of the trust, etc.—Christian v. Highlands, Ind., 69 N. E. Rep. 266.

157. TRUSTS—Purchase of Property in Trustee's Name.—An agent or trustee, who in his own name makes a purchase while in the performance of his duties as such, holds the property for the benefit of his principal or *cestui que* trust.—Seacoast R. Co. v. Wood, N. J., 56 Atl. Rep. 337.

158. WAREHOUSEMEN—Subjects of Lien.—Services performed in cleaning an article in storage is not the subject of a lien for storage charges.—Reidenback v. Tuck, 85 N. Y. Supp. 352.

159. WATER AND WATER COURSES—Damages.—In an action for damages to plaintiff's land by an overflow of water by the obstruction of a stream, it was permissible to show how much the land yielded before it was overflowed, and to what extent its fertility had been impaired.—Southern Ry. Co. v. Morris, Ga., 46 S. E. Rep. 85.

160. WATERS AND WATER COURSES—Interruption of Public Drain.—In an action for interruption of a public drain into a stream, by hauling timber therein, causing damage to plaintiff, held that, the burden being on plaintiff to sustain the demand, the claim must be rejected.—Caillouet & Maginnis v. Coguenhem, La., 35 So. Rep. 385.

161. WATERS AND WATER COURSES—Irrigation District.—The directors of an irrigation district may acquire by purchase or condemnation all lands necessary for the construction, use, repair, and improvement of its canals.—Adams v. Lillion Irr. Co., Neb., 97 N. W. Rep. 336.

162. WATERS AND WATER COURSES—Obstructing Public Drains.—In an action for injuries to plaintiffs, caused by hauling logs in the stream, thereby obstructing the water in a drain and flooding plaintiff's land, defendants cannot be held liable, unless it is shown that they occasioned the loss for which plaintiffs sue.—Caillouet & Maginnis v. Coguenhem, La., 35 So. Rep. 385.

163. WATERS AND WATER COURSES—Purchase of Waterworks by City.—A city may purchase a system of waterworks subject to an incumbrance. — State v. City of Topeka, Kan., 74 Pac. Rep. 647.

164. WATERS AND WATER COURSES—Water Rates.—Water rates are not taxes, within the constitution, requiring a uniformity of taxation, but are merely the price paid for water by the consumer as a commodity; and an ordinance providing that, when water meters have been placed in a house, they could not be removed and the flat rate system adopted without the consent of the water board, is reasonable.—Powell v. City of Duluth, Minn., 97 N. W. Rep. 450.

165. WEAPONS—Toy Firearm —A 22-caliber Stevens rifle held not a toy fire-arm, within Rev. St. 1898, § 4397a. —Taylor v. Seil, Wis., 97 N. W. Rep. 498.

166. WEIGHTS AND MEASURES—Violation of Ordinance.—In an action for a penalty for using short weights, in violation of an ordinance, evidence that certain short weights were found in defendant's grocery store and used there, without proof as to how and for what purpose they were used, held insufficient. —City of New York v. Spatz, 85 N. Y. Supp. 353.

167. WILLS—Claims Against United States.—Fund appropriated to pay Civil War claim held to pass under the will of claimant to the residuary legatees, and not to the heirs at law, under the statute of distribution —Camp v. Vaughan, Ga., 46 S. E. Rep. 79.

168. WILLS—Contest.—On a will contest, before probate, the petition for probate and the contest form the basis of two independent proceedings.—*In re* Latour's Estate, Cal., 74 Pac. Rep. 441.

169. WILLS—Devisee's Right to Complain of Disposition of Property. — Where a testator contracted to devise certain lands to his children, a devisee, who has received his proper portion, cannot complain of the disposition of other lands among the other children, in which he was not interested.—Price v. Price, N. Car., 45 S. E. Rep. 855.

170. WILLS—Effort to Establish a Letter as Testamentary Instrument.—In order to establish a letter as a testamentary instrument, which would supplant a will duly executed, it must be shown that such letter was written subsequent to the date of the will.—Thruston's Adm'r. v. Prather, Ky., 77 S. W. Rep. 354.

171. WILLS—Probate.—The allowance of a will in another state, where the testator had his domicile, if duly authenticated, will be presumed to be in accordance with the laws of that state.—Martin v. Martin, Neb., 97 N. W. Rep. 289.

172. WILLS—Uncertainty.—A provision of a will devising the remainder of testator's estate in separate moieties to the heirs of testator and his wife held not void for uncertainty as to the persons entitled to take.—Van Driele v. Kotvis, Mich., 97 N. W. Rep. 700.

173. WITNESSES—Incriminating Evidence —The privilege of refusing to answer incriminating questions is one personal to the witness, and its denial is not error available to a defendant.—State v. Morgan, N. Car., 45 S. E. Rep. 1033.